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PREGLEDNI RAD

# (Ne)određenost poreza kao dimenzija savremenih poreskih sistema

## Tax (un)certainty as dimension of modern tax systems

### Rezime

Rad ima za cilj da se definiraju granice primjene načela određenosti poreza u procesu dizajna modernih poreskih sistema. U eri globalizacije i širenja prekograničnog poslovanja i pojavom novih poslovnih modela, obveznici se suočavaju sa problemom poštivanja poreskih propisa u više jurisdikcija, a poreske administracije sa problemom utvrđivanja ispravnog poreskog tretmana. Poreska neodređenost ozbiljno pogađa likvidnost, poslovanje i poslovne strategije obveznika, a na makronivou investicije, trgovinu i naplatu prihoda. Istraživanje u radu je pokazalo da je njegova primjena u savremenim državama ugrožena, jer poreski sistemi postaju kompleksniji, kako u području legislative, tako i u sferi implementacije poreskih zakona. Zaključeno je da savremeni finansijski tokovi nalažu redefiniciju načela određenosti i postizanje balansa između poreske određenosti i poželjnog stepena poreske neodređenosti koja je nužna za implementaciju poreskih reformi i veću fleksibilnost poreske politike kao snažnog instrumenta u vrijeme ekonomskih kriza.

**Ključne riječi:** poreska određenost, poreska neodređenost.

### Abstract

The paper aims to define limitations for implementation of tax certainty principle in the process of designing modern tax systems. In the era of globalisation and expansion of cross-border business, taxpayers are facing with problem of tax compliance in more than one jurisdiction, and tax administrations with problem of determination of proper tax treatment. Tax uncertainty seriously affects liquidity, business and business strategies of taxpayers, and, at the macro level, investment, trade and revenue collection. The research in the paper has shown that its application in modern states is jeopardised, since tax systems have become more complex, not only in the sphere of legislation, but also in the field of implementation of tax laws. It has been concluded that modern financial flows request a redefinition of principle of tax certainty and an achievement of the balance between tax certainty and desirable degree of tax uncertainty, which is needed for implementation of tax reforms and greater flexibility of tax policy, as strong instrument in the time of economic crisis.

**Keywords:** tax certainty, tax uncertainty.

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## UVOD

Klasična finansijska teorija načelo određenosti poreza svrstava u osnovna načela oporezivanja, kao aksiom oporezivanja. Razvojem nauke o finansijama, koji je doveo do strukturiranja načela prema određenim kriterijima, načelo određenosti poreza se svrstavalo u poreskotehnička načela, budući da se načelo određenosti odnosi na utvrđivanje poreske obaveze i ostale elemente administriranja porezima (rokovi, način plaćanja, evidencije i dr.). Savremena finansijska teorija načelo određenosti smatra tehničkom dimenzijom načela zakonitosti poreza, jer se zahtjev da porezi budu određeni temelji na zahtjevu da svi elementi oporezivanja budu propisani zakonom, odnosno da samo zakon može biti izvor poreskog prava. Određenost poreza zahtijeva da poreski propisi moraju biti napisani jasnim i razumljivim jezikom, da bi u potpunosti bili razumljivi obveznicima. Međutim, ovaj zahtjev se konstantno narušava čestim izmjenama poreskih propisa, te donošenjem podzakonskih akata (pravilnika, uredbi, odluka, instrukcija), kojima se preciznije uređuju određena područja oporezivanja. Česte izmjene uz njihovu otežanu dostupnost (npr. samo u službenim glasilima koja se plaćaju) ugrožava transparentnost u primjeni propisa. Savremeni trendovi u oporezivanju nalažu objavu svih poreskih propisa, zakonskih i podzakonskih akata, na veb-portalima poreskih administracija, sa jasnom naznakom da li je propis na snazi ili je stavljen van snage, te generalnu dostupnost službenih glasila svim građanima bez plaćanja. Osim toga, potrebno je usvajanje prečišćenih tekstova zakona koji su pretrpjeli mnogo izmjena, što je ujedno i praksa EU, koja, u skladu sa zahtjevom razumljivosti propisa, vrši cjeloviti redizajn (engl. recast) davno usvojenih direktiva, objedinjavajući izmjene i derogacije koje nisu bile objavljene, ne mijenjajući smisao direktiva, uz istovremeno prilagođavanje teksta savremenom stilu normiranja koji je usvojila EU.

Načelo određenosti poreza je nakon niza godina ponovno došlo u fokus obveznika, poreskih administracija i fiskalnih vlasti, čak i najrazvijenijih zemalja iz grupacije G-20. Poslovanje obveznika u eri globalizacije predstavlja izazov za kreatora poreskih politika, budući da obveznici agresivnim poreskim planiranjem na osnovu komparativnih analiza poreskih sistema zemalja u kojima imaju poslovanje ili žele uspostaviti poslovanje odlučuju o lociranju sjedišta korporacije u zemlje u kojima će izbjeći plaćanje poreza ili će poresku obavezu svesti na minimum. S druge strane, obveznici koji imaju poslovanje u više zemalja suočavaju se sa poteškoćama u vezi sa poštivanjem mnoštva poreskih propisa i praksi poreskih administracija. Značaj načela određenosti poreza za globalno poslovanje i globalno oporezivanje je narastao u toj mjeri da eksperti načelo određenosti poreza, uz jednostavnost oporezivanja i stabilnost poreza, smatraju jednim od tri kamena temeljca dobro dizajniranih savremenih poreskih sistema (ACCA, 2015), dok (OECD, 2015) načelo određenosti poreza uključuje u osnovna načela oporezivanja na kojima će se temeljiti poreski sistemi budućnosti.<sup>1</sup> Globalno poslovanje i globalno oporezivanje unosi sve više nesigurnosti i neizvjesnosti u obaveze koje obveznici moraju ispuniti kako bi zadovoljili poreske propise u raznim zemljama, a pred poreske vlasti stavlja neizvjesnost u vezi s naplatom prihoda od poreza, s obzirom na seljenje sjedišta kompanija, pripadajuće dobiti i investicija u poreske rajeve ili jurisdikcije sa povoljnijim poreskim tretmanom. Na drugoj strani, djelovanje globalne ekonomske krize i brze promjene u okruženju primorava vlade da vode fleksibilnu poresku politiku, kako bi se poreskim mjerama ostvarili očekivani ciljevi. Istrajavanje na primjeni načela određenosti poreza nosi opasnost da ukupna poreska politika postane rigidna u toj mjeri

da poreske mjere zbog vremenskog zaostajanja intervencija vlada postanu čak i kontraproduktivne.

Rad ima za cilj da se analizira pitanje optimalnog balansa u kreiranju poreske politike između zahtjeva načela određenosti poreza i zahtjeva za vođenjem fleksibilnije poreske politike. Istraživanje je sprovedeno korištenjem metoda teorijske analize, deskriptivnom i komparativnom metodom. U prvom dijelu rada dati su pregled teorijskih razmatranja koncepta načela određenosti u klasičnoj i savremenoj finansijskoj teoriji i pregled rezultata empirijskih istraživanja u vezi sa uticajem poreske neodređenosti na mikroekonomске sisteme. U drugom dijelu rada opisane su različite dimenzije određenosti poreza i predstavljeni izvori poreske neodređenosti, kao devijacije od zahtjeva koje nalaže načelo određenosti. Analiza u trećem dijelu rada fokusira se na razloge pro et contra poreske određenosti u savremenim poreskim sistemima, nastojeći dati odgovor na pitanje da li poreske sisteme u budućnosti treba kreirati u skladu sa načelom određenosti ili treba dozvoliti određen stepen neodređenosti kako bi se vladama osigurala poželjna fleksibilnost u vođenju poreske politike.

## 1. PREGLED LITERATURE

### 1.1. Teorijska fundiranost poreske određenosti

Načelo određenosti poreza odnosi se na pravno-administrativne karakteristike koje treba da zadovolje poreski oblici i poreski sistem u cjelini. Načelo određenosti poreza najranije se spominje u radovima Adama Smitha (Smith, 1776), kao drugi poreski kanon. Prema Smithu, porezi koje plaća pojedinac treba da budu određeni i ne smiju biti arbitrarno utvrđeni. Kanon opisuje karakteristike poreske obaveze, koja mora biti tačno utvrđena da bi se izbjegla arbitarnost poreskog organa. S obzirom na to da poreska obaveza treba da bude propisana zakonom u svim svojim elementima, u pogledu rokova plaćanja, vrste poreza, načina ubiranja poreza i visine poreske obaveze i dr. moglo bi se zaključiti da drugi kanon odgovara savremenom načelu zakonitosti oporezivanja. Međutim, pored pravnog konteksta, kanon vodi računa i o ekonomskoj dimenziji, u smislu načela određenosti poreza, vodeći računa i o interesima poreskih obveznika. U fokusu elaboracije A. Smitha je štetnost arbitriranja poreza, ukazujući na mogućnost da se obvezniku razreže veća poreska obaveza zbog animoziteta osoba koje prikupljaju porez. Arbitrnost kod utvrđivanja poreza vodi poreskoj neodređenosti, a podstiče aroganciju kod poreznika i osnažuje korupciju u poreskim službama. Smith smatra da je određenost u pogledu visine poreske obaveze od velike važnosti za funkcioniranje poreskog sistema, u toj mjeri da više štete proizvede mali stepen neodređenosti oporezivanja nego značajan stepen nepravičnosti.

Adolph Wagner (Wagner, 1890) načelo određenosti poreza svrstao je u poreskotehnička načela oporezivanja, zbog činjenice da načelo doprinosi definiranju standarda poreskih sistema i njihovoj implementaciji. Za razliku od većine načela oporezivanja, Wagner načelo određenosti smatra aksiomom finansijske teorije, jer je ono, u određenoj mjeri, očigledno iz razloga što direktno proističe iz koncepta i svrhe oporezivanja. Ono je, stoga, samodostatno, bez potrebe za daljim dokazivanjem. U novije vrijeme, Richard Musgrave (Musgrave 1984), prilikom elaboracije poželjnih karakteristika poreskog sistema, u osnovna načela oporezivanja je ubrojio i načelo određenosti, smatrajući da ono ima dvije dimenzije. Jedna se ogleda u zahtjevu da poreski sistemi treba da omoguće fer i objektivan

<sup>1</sup> Radi se o načelima za oporezivanje tzv. digitalne ekonomije, gdje se, uz načelo određenosti, ubrajaju i načela neutralnosti, efikasnosti, jednostavnosti, efektivnosti, pravičnosti i fleksibilnosti.

## INTRODUCTION

Classical financial theory of principle of specificity taxes classified in the basic principles of taxation, as an axiom of taxation. The development of the science of finance, which led to the structuring principles according to certain criteria, the principle of determination of tax is classifiable as a tax-technical principle, as the principle of specificity applies to the determination of tax liability and other elements of the administration of taxes (deadlines, payment methods, records, etc.). Modern financial theory principle of specificity is considered the technical dimension of the principle of legality of taxation, because the requirement that taxes be determined based on the requirement that all elements of taxation are required by law, and that only the law can be a source of tax law. Determination of tax requires that tax legislation must be written in clear and understandable language, so it could be fully understood by taxpayers. However, this requirement is constantly undermines the frequent changes in tax regulations, and the adoption of secondary legislation (regulations, decrees, decisions, instructions) that specifically regulate certain areas of taxation. Frequent changes without certain availability (e.g., only in the official gazettes, which have to be paid) is jeopardize the transparency of the application of rules. Contemporary trends in taxation require disclosure of all tax regulations, laws and bylaws, on the web portals of tax administration with a clear indication of whether the regulation in force or repealed, and the general availability of official media to all citizens without payment. Moreover, it is necessary the adoption of the consolidated texts of laws that have suffered a lot of changes, which is the practice of the EU, which, in accordance with the requirement of comprehensibility regulations, perform a complete redesign (Eng. Recast) long ago adopted the directive, incorporating the amendments and derogation, which were revelation, without changing the meaning of the directive, while customizing text modern style standardization adopted by the EU.

The principle of specificity taxes after many years there has been the focus of taxpayers, tax administration and fiscal authorities, even the most developed countries in the group G20. Business taxpayers in the era of globalization is a challenge for the creators of tax policy, since taxpayers aggressive tax planning based on comparative analysis of the tax systems of the countries in which they have a business or want to establish business decisions about locating the seat of the corporation in the country in which they will avoid paying taxes or to tax liability reduced to a minimum. On the other hand, taxpayers who have operations in multiple countries face difficulties in relation to respect for the multitude of tax legislation and tax administration practices. The importance of the principle of determination of tax for global business and global taxation has grown to such an extent that experts from the principle of specificity of taxes, with the simplicity of taxation and the stability of the tax, considered one of the three cornerstones of well-designed modern tax system (ACCA, 2015), and (OECD, 2015) the principle of specificity tax included in the basic principles of taxation on which to base the tax systems of the future<sup>1</sup>. Global business and global taxation brings more insecurity and uncertainty as to the obligations that taxpayers must meet in order to satisfy the tax regulations in different countries, and from the tax authorities of the uncertainty regarding collection of tax revenues, due to the migration of the company's headquarters, the related profit and investment in tax havens or jurisdictions with favorable tax treatment. On the other hand, the effect of the global economic crisis and rapidly chang-

ing environment is forcing the government to take a flexible tax policy, to the tax measures achieve the expected goals. Insistence on implementing the principle of specificity taxes carries the risk that the overall tax policy becomes rigid to the extent that the tax measures because of the time lag of government intervention become even counterproductive.

The paper aims to analyze the question of the optimal balance in the design of tax policy between the requirements of the principle of specificity taxes and demands for more flexible management of tax policy. The survey was conducted using the method of theoretical analysis, descriptive and comparative method. The first part provides an overview of theoretical consideration of the concept of the principle of certainty in classical and modern financial theory and a review of empirical research regarding the impact of uncertainty of the tax on micro economy systems. The second section describes the various dimensions determination of tax and represented tax sources of uncertainty, as well as deviations from the requirements imposed by the principle of determination. The analysis in the third part of the paper focuses on the reasons pro et contra tax certainty in modern tax systems, trying to answer the question of whether tax systems in the future should be created in accordance with the principle of specificity, or should be allowed a degree of uncertainty as to the governments ensure the desired flexibility in the conduct of tax policy.

## LITERATURE REVIEW

### 1.1. Theoretical foundations of the tax determination

The principle of determination of tax applicable to legal and administrative features that should satisfy the tax forms and tax system as a whole. The principle of specificity tax is mentioned the earliest in the works of Adam Smith (Smith, 1776), as well as other tax canon. According to Smith taxes paid by an individual should be defined and should not be arbitrarily determined. Canon describes the characteristics of the tax liability, which must be accurately determined to avoid the arbitrariness of the tax authority. Since the tax liability shall be prescribed by law in all its elements, in terms of payment deadlines, type of tax, the mode of tax collection and the amount of tax liabilities and others. It could be concluded that other canon corresponds to the modern principle of legality of taxation. However, in addition to the legal context, canon takes into account the economic dimension, in terms of the principle of determination of tax, taking into account the interests of taxpayers. In the focus of the elaboration of A. Smith's harmfulness arbitration taxes, pointing to the possibility that the taxpayer cut higher tax liability due to the animosity of people that collect taxes. Arbitrariness in determining the tax Water tax uncertainty and encourages arrogance with the tax collectors and reinforces corruption in tax offices. Smith believes that the determination regarding the amount of the tax liability of great importance for the functioning of the tax system, to the extent that more damage produces small degree of uncertainty than the taxation significant degree of unfairness.

Adolph Wagner (Wagner, 1890), the principle of tax certainty ranked in tax-technical principles of taxation, due to the fact that the principle of contributing to defining standards of tax systems and their implementation. Unlike most of the principles of taxation, Wagner principle of specificity is considered axiom of financial

<sup>1</sup> These are the taxation principles of the digital economy, where the determining principles also include the principles of neutrality, efficiency, simplicity, effectiveness, equity and flexibility.

pristup poreske uprave, a druga da porezi, odnosno poreski zakoni, treba da budu razumljivi za poreske obveznike.

Strukturirana definicija R. Musgravea i deskriptivna definicija A. Smitha navodi na zaključak da je koncept određenosti u toj mjeri kompleksan da ga je teško obuhvatiti definicijom. Na takav zaključak ukazuje i Wagner (Wagner, 1890). Iako je načelo određenosti, kao aksiom, lako predstaviti i formulirati, pogotovo ako se praksa slijedi postulate finansijske teorije, Wagner ukazuje na problem konkretizacije sadržine načela, preciziranja definicije i pojašnjavanja u trenutku kada načelo treba da bude realizirano u praksi. Koncept određenosti poreza, u osnovi, uključuje mnogo dimenzija. Iz tog razloga u novije vrijeme istraživanja se fokusiraju na antipod koncepta – poresku neodređenost, fenomen koji nastaje zbog devijacija u primjeni načela određenosti poreza. Međutim, i prilikom analiza poreske neodređenosti postoje poteškoće utvrđivanja definicije, pogotovo za potrebe kvantitativnih analiza. Iz tog razloga, analitičari fenomen poreske neodređenosti analiziraju segmentirano, a najčešće u svjetlu implikacija na investicije.

Pored kompleksne sadržine, drugi razlog za nepostojanje sveobuhvatne definicije poreske određenosti je lingvističke naravi. Kao i druga načela i koncepti, i načelo određenosti poreza vuče korijene iz anglosaksonske ekonomske i finansijske stručne i akademske literature. U engleskom jeziku, riječ *certainty* se, ovisno o potrebi, može prevesti pojmovima kao što su “određenost”,<sup>2</sup> “izvjesnost” ili “sigurnost”, koji u domaćem vokabularu ne predstavljaju međusobne sinonime, već komplementarne pojmove. Mnogoznačnost načela određenosti ukazuje na kompleksne relacije između obveznika, poreske administracije i poreske politike. U tom smislu, poreska određenost čini buduću poresku politiku izvjesnom za obveznike, što donosi poresku sigurnost u poslovanje obveznika i naplatu poreskih prihoda od strane vlade. Suprotno tome, odstupanje od poreske određenosti vodi ka eskalaciji u poslovanju i naplati prihoda. Neodređenost poreza unosi neizvjesnost u poslovne planove kompanija, što se efektira u nesigurnoj poslovnoj budućnosti kompanije u pogledu daljeg razvoja i širenja poslovanja, a na makroplanu vodi neizvjesnoj naplati poreskih prihoda i, posljedično, problemima u finansiranju budžeta.

Finansijska teorija poznaje širok dijapazon načela oporezivanja (finansijskih, ekonomskih, pravnih, socijalnih, tehničko-administrativnih i sl.), između kojih postoje veze, često i suprotnosti i konflikti. (OECD, 2015) naglašava interakciju između načela određenosti i ostalih načela oporezivanja. Efikasnost poreskog sistema ovisi o stepenu određenosti i jednostavnosti oporezivanja, dok su određenost i jednostavnost oporezivanja presudni za ostvarenje efektivnosti i pravičnosti oporezivanja. Štaviše, određenost, jednostavnost i stabilnost ne samo da predstavljaju osnovna načela oporezivanja i temelje dizajna dobrog poreskog sistema, već i benchmark, osnovu za poređenje i procjenu efekata izmjena u poreskom sistemu (Piper, 2015). U savremenoj akademskoj i stručnoj literaturi za određenje poreza, da su definirani, u smislu jasnih i preciznih pravila, koji ne ostavljaju prostora za arbitrarna tumačenja poreskih vlasti, koristi se nekoliko pojmova kao što su određenost poreza, poreska (ne) sigurnost i poreska stabilnost, koji su, iako različitog sadržaja, u međusobnoj korelaciji. Određenost poreza unosi sigurnost u poreski sistem, doprinoseći njegovoj stabilnosti, ne samo u smislu odnosa između poreskih vlasti i poreskih obveznika, već i u pogledu uticaja na fiskalni i ekonomski sistem u cjelini, tj. uticaja na poslovanje obveznika i prikupljanja prihoda za finansiranje budžeta. U konačnici, određenost poreza doprinosi stabilnosti pravnog sistema

i vladavine prava u nekoj zemlji. Piper (Piper, 2014) smatra da je određenost poželjna karakteristika poreskih sistema, ali da kreatori poreske politike moraju imati u vidu korelaciju sa drugim načelima oporezivanja u svjetlu divergentnih interesa vlade i obveznika, čak i određenih grupacija obveznika.

Iako se često tretiraju kao sinonimi, stabilnost poreza se smatra pojmom bliskim određenosti poreza (Piper, 2015). Stabilnost i predvidivost poreza je od velikog značaja za sve države (Bird, 2002), a pogotovo za složene države u kojima postoji mehanizam podjele poreza između nivoa vlasti (Oates, 1972). Obveznici, ukoliko ulaze u određene poslovne transakcije, žele unaprijed znati sve implikacije odluke, uključujući i poreske. Stabilnost poreza je od presudnog značaja za poslovanje kompanija, budući da porezi predstavljaju odliv gotovine. U vrijeme turbulencija na svjetskim finansijskim tržištima, svaki nepredviđeni odliv gotovine ugrožava likvidnost kompanija i umanjuje očekivani povrat na investicije. Dok se može očekivati da su manja podešavanja poreskog sistema ugrađena u gotovinski tok investicija, iznenadne velike izmjene u poreskim propisima mogu kompanije izložiti velikim troškovima, ne samo u pogledu poštivanja poreskih propisa, već i u smislu narušavanja gotovinskog toka. Prema Piperu (Piper, 2015), “određenost” poreza podrazumijeva saznanje o poreskom tretmanu poslovne odluke, dok se “stabilnost” poreza odnosi na činjenicu da li će taj poreski tretman biti na snazi za određeni broj godina u kojima se očekuju efekti poslovne odluke. U tom smislu, moglo bi se zaključiti da je načelo određenosti poreza inkorporirano u načelo stabilnosti poreza kao njegova kratkoročna dimenzija. (Piper, 2015) smatra da načelo stabilnosti uključuje tri aspekta: stabilnost poreskih stopa, stabilnost poreske osnovice i stabilnost poreske administracije. Stabilne poreske stope i poreska osnovica će omogućiti obveznicima da planiraju poslovne aktivnosti u budućnosti sa većim stepenom izvjesnosti po gotovinski tok. Fiskalne vlasti treba prilikom izrade nacrtu izmjena poreskih propisa da analiziraju uticaj poreskih mjera na kompanije, ne samo u smislu implikacija na troškove, zaposlenost i investicije, već i u smislu troškova poštivanja poreskih propisa. Pri tome, vlade se moraju voditi načelom minimiziranja troškova obveznika. Isto tako, potrebno je da vlada procijeni i uticaj novih poreskih mjera na troškove administriranja poreza koje imaju poreske administracije, budući da opterećuju budžet države i umanjuju mogućnosti finansiranja javnih potreba građana i društva u cjelini. Posebno su pogođeni mali obveznici – direktno zbog fiksnog karaktera troškova poštivanja poreskih propisa, te indirektno, jer nisu u stanju da prate česte izmjene propisa, pa čak ni onda kada u u njihovu korist, ili zbog tehničke i regulatorne kompleksnosti nemaju kapaciteta da primijene olakšice omogućene poreskim propisima. Stabilnost poreskog sistema ovisi i o stabilnosti poreske administracije, koja se ogleda u dobro razvijenim procedurama i tehničkoj podršci i niskoj fluktuaciji ključnog osoblja.

Veliki obveznici se zalažu za određenost poreza, dok mali obveznici preferiraju jednostavnost. Ukoliko insistiranje na određenosti poreza dovede do ekonomske stagnacije zbog neprilagođavanja poreske politike cijena koju će podnijeti vlada, obveznici i svi građani je prevelika u odnosu na troškove koje proizvodi prihvatljiv stepen poreske neodređenosti. U tom smislu, potreban je balans (*trade off*) između načela određenosti poreza i efikasnosti oporezivanja.

Veći stepen određenosti poreza u smislu detaljnog propisivanja svih aspekata oporezivanja vodi kompleksnosti oporezivanja, što je u koliziji sa načelom ekonomičnosti oporezivanja, kako za poreske administracije, tako i za obveznike. S druge strane, načelo jednostav-

<sup>2</sup> U čuvenoj izreci Benjamina Franklina riječ *certainty* se prevodi kao „sigurno“ („Ništa nije sigurno osim smrti i poreza“, dio pisma Franklina francuskom naučniku Jean-Baptiste Leroy iz 1789).

theory, because it is, to some extent, apparently because it derives directly from the concept and purpose of taxation. It is, therefore, self-sufficient, without the need for further proving. More recently, Richard Musgrave (Musgrave, 1984), in the elaboration of the preferred features of the tax system, the basic principles of taxation is counted and the principle of specificity, considering that it has two dimensions. One is reflected in the requirement that tax systems should provide a fair and objective approach to tax administration and one that taxes or tax laws should be understandable to taxpayers.

Structured definition of R. Musgrave and descriptive definition of A. Smith suggests the conclusion that the concept of specificity to the extent complex that it is difficult to include a definition. This conclusion was pointed out by Wagner (Wagner, 1890) too. Although the principle of specificity, as an axiom, it is easy to formulate and present, especially if the practice followed by financial theory postulates, Wagner indicates a problem concretion of the contents of principles, specifying and clarifying the definition of the moment when the principle should be realized in practice. The concept of determination of tax, basically, involves many dimensions. For this reason, in recent years research has focused on the concept antipode - tax uncertainty, a phenomenon that occurs due to deviations in the application of the principle of tax certainty. However, during the analysis of tax uncertainty there are difficulties of establishing definitions, especially for the purpose of quantitative analysis. For this reason, analysts phenomenon of tax uncertainty analysis segmented, and usually in the light of the implications on investment.

In addition to complex content, another reason for the lack of a comprehensive definition of the tax determination is a linguistic nature. Like the other principles and concepts and the principle of tax certainty stems from the Anglo-Saxon economic, financial professional and academic literature. In English the word "certainty" is based on the need to be translated terms such as "determination",<sup>2</sup> "certainty" or "security", which in the local vocabulary does not represent mutual synonyms, but rather as complementary notions. Many meanings of the principle of specificity indicates the complex relationship between taxpayers, tax administration and tax policy. In this regard, the tax determination makes future tax policy for certain taxpayers, bringing tax certainty in business taxpayers and tax revenue collection by the government. In contrast, a departure from the determination of the tax leads to escalation in operations and revenue collection. Uncertainty of taxes brings uncertainty into the business plans of the companies, which are effected in an uncertain business future of the company with regard to the further development and expansion of business, and at the macro level, leads a precarious collection of tax revenue and, consequently, problems in financing the budget.

Financial theory has a wide range of principles of taxation (financial, economic, legal, social, technical, administrative, etc.), between which there are links, often contrasts and conflicts. (OECD, 2015) emphasizes the interaction between the principle of certainty and other principles of taxation. The efficiency of the tax system depends on the degree of certainty and simplicity of taxation, while the certainty and simplicity of taxation are crucial for achieving effectiveness and fairness of taxation. Moreover, certainty, simplicity and stability not only represent the basic principles of taxation and based on the design of a good tax system, but also a benchmark, a basis for comparison and evaluation of the effects of changes in the tax system (Piper, 2015). In contemporary academic and

professional literature for the determination of taxes that are defined in terms of clear and precise rules, which do not leave room for arbitrary interpretations by tax authorities, several concepts, such as the determination of tax, tax insecurity and tax stability, who though with different content, interrelated. Determination of tax brings certainty in the tax system, contributing to its stability, not only in terms of the relationship between tax authorities and taxpayers, but also in terms of the impact on fiscal and economic system as a whole, ie. Impact on business taxpayers and revenue collection to finance the budget. Ultimately, the determination of taxes contributes to the stability of the legal system and the rule of law in a country. Piper (Piper, 2014) think that the determination desirable characteristics of the tax system, or that the creators of tax policy must take into account the correlation with other principles of taxation in the light of the divergent interests of the government and the taxpayers, even certain groups of taxpayers.

Although often treated as synonyms tax stability is considered to be close to the concept of specificity taxes (Piper, 2015). The stability and predictability of the tax is of great importance for all countries (Bird, 2002), especially for complex state in which there is a mechanism of tax sharing between levels of government (Oates, 1972). Taxpayers, when entering into certain business transactions they want to know in advance all the implications of the decision, including tax. Tax stability is crucial to the business of the companies, since taxes represent cash outflow. In times of turbulence on world financial markets, any unanticipated cash outflow threatens the liquidity of companies and reduces the expected return on investment. While it can be expected that minor adjustments to the tax system built into the cash flow of investments sudden large changes in tax regulations, the company may incur substantial costs, not only in terms of compliance with tax regulations, but also in terms of disrupting cash flow. According to Piper (Piper, 2015) "determination" of taxes includes knowledge about the tax treatment of business decisions, while the "stability" of taxes related to the fact whether the tax treatment to be effective for certain numbers of years in which the expected effects of business decisions. In this sense, it could be concluded that the principle of determination of tax incorporated in the principle of stability of the tax as his short-term dimensions. Piper (2015) considers that the stability principle involves three aspects: the stability of the tax rate, stability of tax base, and the stability of the tax administration. Stable tax rates and the tax base will allow taxpayers to plan business activities in the future with a greater degree of certainty by cash flow. Fiscal authorities need when drafting changes in tax regulations analyze the impact of tax measures on the company, not only in terms of the implications on costs, employment and investment, but also in terms of costs of compliance with tax regulations. In doing so, the government must be guided by the principle of minimizing the cost of the taxpayer. Also, the government should assess the impact of new tax measures on the costs of administering taxes with Tax Administration, since the burden on the state budget and reduce the possibility of financing public needs of citizens and society at large. Particularly affected small taxpayers - directly due to the fixed nature of costs of compliance with tax regulations, and indirectly, because they are not able to follow the frequent changes in regulations, even when in in their favor, or because of technical and regulatory complexities do not have the capacity to apply the exemptions provided tax regulations. The stability of the tax system depends on the stability of the tax administration, which is reflected in the well-developed procedures and technical

<sup>2</sup> In the famous quote of Benjamin Franklin, the word certainty is translated as "safely" ("Nothing is certain except death and tax," part of Franklin's letter to the French scientist Jean-Baptiste Leroy of 1789).

nosti poreza može dovesti do nepotpunih ili dvosmislenih poreskih propisa, koji će u konačnici otežati njihovu primjenu svim stranama, pa i malim obveznicima. MMF i OECD (IMF, OECD, 2017) se zalažu za pristup normiranja poreskih propisa koja polazi od načela oporezivanja. Pristup podrazumijeva fleksibilnost u izradi propisa – da se izbjegava detaljno propisivanje poreskih pravila koje otežava primjenu propisa i čini ga nerazumljivim, a da se, s druge strane, omogući fleksibilnost poreskog propisa u odnosu na brze promjene poslovnih struktura i praksi. Predložena tehnika normiranja poreskih propisa sastoji se u tome da iza općih pravila slijede detaljnija pravila kojima se uključuje i isključuje njihova primjena. Poreski propisi treba da sadrže ključne odredbe, a detaljnija pojašnjenja potrebno je razraditi podzakonskom regulativom (pravilnicima i dr.) ili čak smjernicama za obveznike. Ipak, diskrecione ovlasti vlade treba da budu propisane zakonom, a ne podzakonskom regulativom. Shaw i dr. (Shaw et al., 2011) upozoravaju da nema pravičnosti i određenosti oporezivanja ukoliko se zakon može derogirati diskrecionim odlukama poreske administracije.

## 1.2. Pregled empirijskih istraživanja implikacija poreske neodređenosti

Poreska (ne)određenost utiče na odlučivanje kompanija na nekoliko načina (Piper, 2014). Prvo, ukoliko obveznik ima izbor transakcije, tačno predviđanje obaveza za poreze će pomoći donošenju racionalne odluke. Drugo, čak i kada nema izbora, poreska neodređenost utiče na proces odlučivanja o poslovnim aktivnostima. Treće, poreska neodređenost ima određene oportunitetne troškove, dok održavanje rezervnih fondova za potencijalne poreske obaveze ugrožava likvidnost kompanije i ograničava investiranje. Istražujući povezanost poreske neodređenosti i investicija na uzorku koji su činile zemlje istočne i centralne Evrope, Edmiston (Edmiston, 2001) zaključio je da kompleksan dizajn poreske politike negativno utiče na direktne strane investicije. Kompleksnost je testirana u smislu postojanja više poreskih stopa, kompleksnih odredaba kojima se definira poreska osnovica (dužina teksta, nejasnost, dvosmislenost, nedorečenost i neodređenost fraza) i nekonzistentne izmjene poreskih parametara.

Baker i dr. (2016) konstruirali su indeks neodređenosti ekonomske politike (tzv. EPU index), koji se može primijeniti i na poresku politiku. Indeks se bazira na ponderiranom prosjeku tri različite komponente: (i) broja članaka iz medija u vezi određene poreske mjere; (ii) poreske neodređenosti u pogledu izmjena poreskih propisa sa procijenjenim novčanim efektima odredaba zakona koji prestaju da važe u bližoj budućnosti i (iii) disperzije ekonomskih predviđanja nivoa cijena i vladine potrošnje zbog fiskalne i monetarne politike. Istraživanja sprovedena na kompanijama iz SAD koje posluju u 12 država pokazala su da neodređenost politika, pa i poreske, ima značajan negativan uticaj na zaposlenost, investicije i proizvodnju. U strukturi EPU indeksa komponenta plasiranja vijesti u medijima ima najveći efekat, dok komponenta poreske neodređenosti čini oko 1/3 ukupnih efekata.

Stabilan poreski sistem predstavlja prioritet za velike kompanije. Istraživanje uticaja poreske stabilnosti na poslovanje evropskih kompanija (Deloitte, 2013) pokazalo je da je poreska stabilnost prijeko potrebna za uspješno poslovanje. Poreska stabilnost iz ugla privrednih subjekata podrazumijeva više izvjesnosti u smislu pravila koja će se primjenjivati u budućnosti, izbjegavanja čestih promjena poreskih propisa, više transparentnosti administriranja poreza od strane poreznih administracija, u smislu objave internih pravila i procedura, i jednostavnija pravila oporezivanja. Kompanije poresku neodređenost smatraju glavnim faktorom koji odvraća kompanije i investitore da posluju u EU. Istraživanje OECD pokazalo je da je za kompanije koje posluju globalno poreska neodređenost treći faktor po značaju za investicije, nakon korupcije i političke

nestabilnosti. Kompanije su identificirale dva izvora poreske neodređenosti: neodređenost u vezi sa efektivnom poreskom stopom poreza na dobit i neodređenost u vezi s korištenjem poreskog kredita, prava na povrat, utvrđivanja mjesta isporuke u svrhu PDV-a, te u vezi sa akcizama i carinskim stopama (Maffini, 2017). I zemlje u razvoju se suočavaju sa negativnim efektima poreske neodređenosti. Prema posljednjem istraživanju MMF i OECD (IMF, OECD, 2018) za zemlje u razvoju poreska neodređenost predstavlja četvrti po redu faktor za uspješno poslovanje, nakon korupcije, nestabilnog makroekonomskog i političkog sistema. Neodređenost poreza se manifestira u vezi sa poreskim stopama, pravima obveznika na povrate PDV-a i ostalih poreza, oporezivanja profita i dr. Zemlje u razvoju izvore poreske neodređenosti nalaze u najvećoj mjeri u pravnom sistemu, u smislu loše dizajniranih poreskih propisa, te u poreskoj administraciji, zbog birokratskog postupanja sa obveznicima, nekozistentnom poreskom tretmanu i nepredvidivosti pravila i procedura administriranja.

Istraživanje koristi od poreske stabilnosti pokazalo je da polovica ispitanika (kompanija) drži poresku neodređenost bitnim faktorom koji neku jurisdikciju čini atraktivnom za uspostavljanje poslovanja (Deloitte, 2013). Kao glavni faktori poreske neodređenosti istaknuti su često mijenjanje poreskih propisa i loša komunikacija sa poreskom administracijom.

## 2. UZROCI PORESKE NEODREĐENOSTI

### 2.1. Dimenzije poreske određenosti

Slijedom efekata poreza na makroekonomske i mikroekonomske sisteme, poreska neodređenost ima mikro i makro dimenziju (Zangari, Caiumi i Hemmelgarn, 2017). Iako se u praksi najviše govori o efektima poreske neodređenosti na konkretne poreske obveznike, ne smiju se izgubiti iz vida makroekonomske implikacije poreske neodređenosti. Makrodimenzija se odnosi na politiku oporezivanja i poresku strukturu, u smislu udjela određenih poreskih prihoda i njihove elastičnosti. Načelo elastičnosti oporezivanja nalaže da se porezi prilagođavaju promjenama u visini javnih rashoda. U praksi, primjena ovog načela podrazumijeva koncipiranje poreskog sistema na način da se osigura kontinuirano usklađivanje kretanja javnih prihoda kako bi bili dostatni za finansiranje stalno rastućih javnih rashoda. Kvalitet većeg dijela javnih rashoda jeste sporo prilagođavanje ekonomskim kretanjima i ciklusima rasta ekonomije. Većina rashoda je nefleksibilna, s jedne strane, zbog nužnosti određenih javnih potreba bez obzira na stanje ekonomije (rashodi za nacionalnu odbranu, javni red i sigurnost, zdravstvo i obrazovanje) ili zbog zakonske osnove uvođenja, poput rashoda za plate, naknade, penzije, socijalna davanja, socijalno osiguranje, čija visina je propisana zakonom ili kolektivnim ugovorima. U slučaju pada ekonomske aktivnosti, recesije i nezaposlenosti, jaz između prihoda i rashoda se povećava, budući da se poreski prihodi (porez na dohodak, dobit) brzo smanjuju zbog smanjenja dohotka i dobiti, a s druge strane rashodi su stabilni, jer je potrebno određeno vrijeme da se izmijene zakonski propisi koji reguliraju visinu plata, naknada i dr. Jaz između javnih rashoda i prihoda, do trenutka kada se primijene reforme koje će dovesti do smanjenja rashoda, može se zatvoriti na nekoliko načina: povećanjem poreza, zaduživanjem, ali i efikasnijom naplatom onih poreza čiji je volumen konstantan bez obzira na privrednu konjunkturu. U osnovi, radi se o finansijskoj elastičnosti koju posjeduju porezi poput poreza na promet, poreza na prihode od imovine, poreza na imovinu ili posebnih poreza – akciza (na duhan, alkohol, derivate nafte). Postoje određena dobra i usluge koje građani kupuju bez obzira na visinu dohotka i čiji se

support and staff turnover is low. Large taxpayers advocate for determination of taxes, while small taxpayers prefer simplicity. If you insist on the determination of taxes lead to economic stagnation due to poor adjustment of tax policy price that will handle the government, taxpayers and all citizens is excessive in relation to the cost of producing an acceptable level of tax uncertainty. In this sense requires a balance (trade-off) between the principle of tax certainty and efficiency of taxation.

A greater degree of tax certainty in terms of the detailed prescribing all aspects of taxation leads to the complexity of taxation, which is in conflict with the principle of economy of taxation, both for tax administration and for taxpayers. On the other hand, the principle of simplicity taxes can lead to incomplete or ambiguous tax regulations, which will ultimately hamper their application to all parties, including retail bonds. The IMF and OECD (IMF, OECD, 2017) advocate for approach of norming to tax legislation which departs from the principle of taxation. Access means flexibility in the forming of regulations - to avoid a detailed prescription of tax rules that hinder the implementation of regulations and makes it incomprehensible, and, on the other hand, provide flexibility of the tax rules in relation to rapid changes in business structures and practices. The proposed technique scaling tax regulations consists in the fact that behind the general rules followed by more detailed rules on and off their application. Tax regulations should contain key provisions, a detailed explanation is necessary to develop secondary legislation (regulations, etc.). Or even guidelines for taxpayers. However, the discretionary powers of the government should be required by law, rather than secondary legislation. Shaw and others. (Shaw et al. 2011) indicate that there is no justice and certainty of taxation if the law can degrade discretionary decisions of the tax administration.

## 1.2. Overview of empirical studies of the implications of tax uncertainty

Tax uncertainty influence the decision making of companies in several ways (Piper, 2014). First, if the taxpayer has the choice of transactions and accurately predict taxes payable will help to make rational decisions. Second, even when there is no choice tax vagueness affects the decision-making process of business activities. Third, the tax uncertainty has certain opportunity costs, while maintaining reserve funds for potential tax liabilities endanger the liquidity of the company and the investment limits. Exploring the connection between the uncertainty tax and investment uncertainty in the sample consisted of Eastern and Central Europe Edmiston (Edmiston, 2001) concluded that the complex design of tax policy has a negative impact on foreign direct investment. The complexity has been tested in the sense of the existence of multiple tax rates, complex provisions defining the tax base (length of the text, the blurring ambiguity, and the ambiguity of certain word, phrase, and uncertainty) and inconsistent changes to tax parameters.

Baker and others (Baker et al., 2016) constructed an index of economic policy uncertainty (i.e. The EPO index), which can be applied to tax policy. The index is based on the weighted average of three different components: (i) the number of articles in the media concerning certain tax measures; (ii) the tax uncertainty in terms of changes in tax regulations with the estimated financial effects of the provisions of laws shall be repealed in the near future and (iii) the dispersion of economic forecasting price levels and government spending due to fiscal and monetary policy. Research that have been made on companies in the US operating in 12 countries showed that the vagueness of policies, including tax, has a significant negative impact on employment, investment and production. The structure of the EPO index component placement in the news media has the greatest effect, while the tax component of the uncertainty is about 1/3 of the total effects.

A stable tax system is a priority for large companies. Exploring the impact of tax stability to the operations of European companies (Deloitte, 2013) showed that tax stability necessary for a successful business. Tax stability from the perspective of economic entities implies more certainty in terms of the rules that will apply in the future, to avoid frequent changes in tax regulations, more transparent tax administration of the tax administration, in terms of the publication of internal rules and procedures, and simpler tax rules. Companies considers tax uncertainty the main factor that discourages companies and investors to do business in the EU. The OECD study showed that for the companies that operate globally tax vagueness third factor in character for investment, after the corruption and political instability. The companies have identified two sources of tax uncertainty: uncertainty regarding the effective tax rate of profit and uncertainty about the use of tax credits, the right to return, determining the place of delivery for the purposes of VAT, and in connection with the Excise and customs rates (Maffini, 2017). And developing countries are facing the negative effects of tax uncertainty. According to the latest survey by the IMF and OECD (IMF, OECD, 2017) for developing countries tax vagueness represents the fourth factor for the successful operation after corruption, unstable macro-economic and political system. Uncertainty tax manifests itself in relation to tax rates, the taxpayer's right to reclaim VAT and other taxes, profit taxes, etc. Developing countries tax sources of uncertainty are mainly in the legal system, in terms of badly designed tax legislation and tax administration, because of the bureaucratic treatment of taxpayers, an inconsistent tax treatment and the unpredictability of the rules and procedures of administration.

The research of benefited from the tax stability showed that half of respondents (companies) holding tax uncertainty important factor that makes an attractive jurisdiction for the establishment of business (Deloitte, 2013). Tax as the main factors of uncertainty highlighted the frequent changes in tax regulations and poor communication with the tax administration.

## 2. CAUSES OF TAX INDEFINITENESS

### 2.1. Dimensions tax determination

Following the effects of tax on macro and micro systems tax uncertainty has micro and macro dimension (Zangari, Caiumi and Hemmelgarn, 2017). Although in practice most talked about effects of tax uncertainty to specific taxpayers must not lose sight of the macroeconomic implications of tax uncertainty. Macro dimension refers to tax policy and tax structure, in terms of share of certain tax revenues and their elasticity. The principle of elasticity of taxation requires that taxes adapt to changes in the amount of public expenditure. In practice, the application of this principle implies the design of the tax system in a way to ensure the continued harmonization of public revenues to be sufficient to finance the ever-growing public expenditure. The quality of most of the public expenditure is the slow adjustment of economic trends and cycles of economic growth. Most of the expenditure is inflexible on the one hand because of the necessity of certain public needs regardless of the state of the economy (expenditures for national defense, public order and security, health and education) or because the legal basis of introduction, such as expenses for salaries, wages, pensions, social benefits, social security, the amount of which is prescribed by law or collective agreements. In the case of the economic downturn, recession and unemployment, the gap between income and expenditure increases, since tax revenues (income tax, profit tax)

obim potrošnje značajnije ne mijenja ni u vrijeme konjunktura, ali ni u vrijeme recesije. To su lokalna prehrambena dobra, komunalne usluge, kao i akcizna dobra. S druge strane, porez na dohodak i porez na dobit u velikoj mjeri su ovisni o konjunkturalnim kretanjima, jer pad ekonomske aktivnosti dovodi do pada zaposlenosti i smanjenja dohotka i dobiti. Za razliku od finansijske elastičnosti, ekonomska elastičnost podrazumijeva automatsko prilagođavanje poreskih prihoda rastu potrošnje bez izmjene poreskih stopa. Porast potrošnje građana automatski povećava prihode od poreza koji se plaćaju prema određenoj stopi poreza (*ad valorem* porezi). Stoga, porast prihoda od poreza na promet, PDV-a ili dohotka, automatski se osigurava bez izmjene poreskih propisa. Međutim, kod drugih poreskih oblika, elastičnost poreza se može osigurati samo izmjenom zakona. U ovom slučaju, radi se o legalnoj elastičnosti poreza. Primjer poreza čija se elastičnost može osigurati samo izmjenom propisa svakako je porez na imovinu. Imajući u vidu različitu elastičnost pojedinih poreskih oblika, možemo zaključiti da će poreska neodređenost za obveznike biti veća kod onih poreskih oblika koji su značajniji za finansiranje budžeta, a čije prilagođavanje zahtijeva izmjene propisa.

Poreska neodređenost za obveznika javlja se znatno prije primjene poreskih zakona ili poreskih mjera. Što je duže vrijeme od najave izmjene poreske politike do momenta usvajanja u parlamentu i primjene propisa, to je veća neizvjesnost za obveznika. Obveznici će nastojati prilagoditi poslovne planove i strategije kako bi preduprijedili izmjene poreske politike, amortizirali negativan uticaj novih poreskih mjera ili kreirali poslovnu politiku kojom bi izvukli koristi iz novih poreskih mjera. Efikasnost izmjena poreskih propisa ovisi uveliko i od povjerenja obveznika prema vladi. Povjerenje se stječe godinama, ali može biti uništeno ukoliko se poreski sistem mijenja bez najave. Povjerenje u vladu će biti narušeno u takvim slučajevima, čak i ukoliko se radi o poboljšanjima u poreskom sistemu (Piper, 2015). S druge strane, nekad je oportuno da se poreske mjere uvedu u veoma kratkom vremenu, kako bi se onemogućile poreske prevare i brzo "prilagođavanje" obveznika (npr. vještačka podjela dohotka ili prometa kako bi obveznik bio u nižoj skali poreza ili izbjegao plaćanje poreza). Ipak, Shaw i dr. (Shaw at al., 2011), na osnovu iskustava V. Britanije, ukazuju da promoviranje netransparentnosti i nepredvidljivosti u kratkom roku mogu donijeti rast prihoda, ali da je potrebno uvijek insistirati na transparentnosti i određenosti kao glavnim odlikama pravičnog i efikasnog poreskog sistema.

Makrodimenzija poreske neodređenosti ispoljava se na više načina. Po pravilu, poreski propisi su nepotpuni ili su kompleksni, u smislu mnoštva podzakonskih akata (pravilnika, odluka, instrukcija i sl.). Pored toga, neizvjesnost postoji i s obzirom na konačni tekst poreskih propisa, budući da se nacrt poreskih propisa može do momenta usvajanja mijenjati amandmanima u parlamentarnoj proceduri donošenja propisa ili pod pritiscima građana, određenih lobija (npr. političkih, proizvođačkih, uvoznčkih i sl.) ili struktura (civilnog društva, poslovne zajednice, socijalnih partnera, međunarodnih institucija...). Velika neizvjesnost proizlazi i iz ugradnje privremenih poreskih mjera u zakone, sa određenim rokovima važenja (tzv. „sunset law“). Kratkoročni karakter privremenih poreskih mjera obveznicima ograničava mogućnost prilagođavanja poslovne politike, pogotovo ukoliko se radi o nejasnim mjerama sa slabo pojašnjenim ciljevima uvođenja i očekivanim efektima. MMF i OECD (IMF, OECD, 2017) ukazuju na to da postojanje privremenih poreskih mjera ne mora biti u osnovi štetno za obveznike, već situacije kada te mjere nisu jasne ili kredibilne, odnosno, ukoliko postoji neizvjesnost u pogledu mogućnosti njihovog produžetka, budući da je zakonom ostavljena takva mogućnost. Poreska neodređenost se povećava i kada se pravila oporezivanja različito promjenjuju. Poreske administracije sastoje se iz velikog broja organizacijskih jedinica, pogotovo ukoli-

ko postoji više administrativno-političkih jedinica unutar zemlje. U takvim okolnostima često se pravila oporezivanja ne primjenjuju na jedinstven način. Poreska neodređenost za obveznika se povećava širenjem poslovanja u treće zemlje i uključivanjem u integracije, poput EU, gdje postoji neujednačenost primjene.

## 2.2. Izvori poreske neodređenosti

Izvori poreske neodređenosti mogu biti nacionalni i međunarodni (Zangari at al., 2017). U pogledu obilježja, izvori poreske neodređenosti su pravne, ekonomske, političke, institucionalne i administrativne prirode. Glavni nacionalni izvori poreske neodređenosti pravnog su karaktera – neprecizni poreski propisi, i politički – česte izmjene poreske politike. Zangari i dr. (Zangari at al., 2017) ističu da priprema i implementacija poreskih reformi, uz kasnija podešavanja i izmjene, vrlo često donose veliku poresku neodređenost, koja se efektira u dodatnim troškovima poštivanja propisa.

Osim proceduralnih pitanja vezanih za usvajanje poreskih propisa, pravni uzroci poreske neodređenosti su nedovoljno precizne zakonske odredbe, pojava sukoba propisa, te različita tumačenja pravnih normi od strane poreske administracije, obveznika i sudova, koja eskaliraju protekom vremena primjene propisa (Zangari at al., 2017). Bilo kakve intervencije na poreskim propisima, kao korekcija nakon što su se pokazali negativni efekti primjene propisa ili kao faza u implementaciji složene poreske reforme, zahtijevaju izmjenu i pravilnika o primjeni zakona i izmjene ili donošenje novih podzakonskih akata. U slučaju nepreciznih zakonskih odredaba i nepostojanja odgovarajućih pravila, instrukcija i pojašnjenja, neminovna posljedica je različita interpretacija poreskih propisa, što će rezultirati povećanjem broja predmeta pred nacionalnim sudovima, a u slučaju EU i predmeta protiv članica pred Sudom EU. Pagone (Pagone, 2009) ukazuje na pojavu namjerne neodređenosti zakona. On sugerira da diskreciona prava u poreskim zakonima treba da budu strukturirana, razgraničena, podložna reviziji i predvidiva. MMF i OECD (IMF, OECD, 2017) ukazuju da kvalitetna poreska legislative, ukoliko mijenja poreski tretman postojećih investicija, treba obavezno uključiti i prelazne odredbe koje treba implementirati fazno u određenom razdoblju nakon početka primjene novog propisa/pravila/mjere, odnosno nakon stavljanja van snage prethodnog propisa/pravila/mjere, sve u cilju ostvarenja kredibiliteta, sigurnosti i stabilnosti pravila oporezivanja.

Čak i najsavršeniji poreski zakon može proizvesti neodređenost među obveznicima ukoliko je loše implementiran od strane poreske administracije. Za MMF i OECD (IMF, OECD, 2017), poreska administracija ima centralnu ulogu u implementaciji poreskih propisa, jer predstavlja ključni kanal za kreiranje odgovarajućeg poreskog sistema. Pritom, koherentna legislativa ne može doprinijeti poreskoj sigurnosti ukoliko je ne prati koherentna, pravična i efikasna implementacija. Ostvarenje zakonom omogućenih poreskih olakšica kod oporezivanja dohotka i dobiti ili pravo na povrat PDV-a čak i u razvijenim zemljama može biti znatno otežano od strane poreske administracije zbog njenih kompleksnih administrativnih pravila i procedura, koje često znaju odvratiti obveznike od konzumacije prava koja im omogućava zakon. Isto tako, poresku neodređenost pojačava i nekonzistentna primjena poreskih pravila od strane poreske administracije, pogotovo u vezi s diskrecionim odobravanjem poreskih poticaja, poreskog tretmana i procedura kontrole i revizije. MMF i OECD (IMF, OECD, 2017) ukazuju na negativan uticaj loše planiranih i izvedenih postupaka kontrole i revizije, koje se ogledaju u razvučenim razdobljima revizije, dugim sporovima, velikim brojem neriješenih sporova, velikim odstupanjima u rezultatima revizije, što sve unosi veliku neodređenost među obveznike. Tradicionalna polarizacija mišljenja poreske administracije i obveznika da su svi obveznici skloni prevarama, a da svi inspektori vrše presiju nad obveznicima, dovodi do nepotrebnog izlaganja troškovima i nera-



is rapidly decreasing due to the reduction in income and profits, on the other hand expenditures are stable, because it takes some time to amend legislation regulating the wages, benefits and others. The gap between public expenditure and revenue, to the moment when applied reforms that will lead to a reduction in expenses can be closed in several ways: by raising taxes, borrowing, or the efficient collection of those taxes whose volume is constant regardless of the economic conjuncture. Basically it's about the financial resilience of their possession taxes such as sales taxes, taxes on income from assets, property taxes or special taxes - excise taxes (on tobacco, alcohol and oil products). There are some goods and services that people buy regardless of the amount of income and whose volume of consumption does not significantly change even in the boom time, but not during the recession. These are local domestic goods, utilities, as well as excise goods. On the other hand, income tax and profit tax are largely dependent on cyclical trends, because the decline in economic activity leads to a decline in employment and a reduction in income and profits. Unlike the financial resilience of economic resilience means automatic adjustment of tax revenue growth of consumption without changing tax rates. The increase in consumer spending automatically increases tax revenues paid to a particular tax rate (ad valorem taxes). Therefore, the increase in revenues from sales tax, VAT or income automatically ensures without changes in tax regulations. However, in other forms of taxation, tax elasticity can be ensured only by changing the law. In this case, it is about the legal tax elasticity. As an example of tax, whose elasticity can be ensured only by changing regulations is certainly a property tax. Bearing in mind the different elasticity of individual tax forms can be concluded that the uncertainty of the tax payers to be higher in those tax forms that are important for the funding of the budget, whose adjustment requires changes to regulations.

The effectiveness of changes in tax legislation depends largely on the trust of taxpayers to the government. Confidence is gained in years, but can be destroyed if the tax system changes without notice. Confidence in the government will be affected in such cases, even if it comes to improvements in the tax system (Piper, 2015). On the other hand, sometimes it is opportune that the tax measures introduced in a very short time, to preventing tax fraud and quick "adjustment" of taxpayers (e.g. an artificial division of income or turnover to the taxpayer was in a lower scale tax or avoid paying taxes). However, Shaw and others (Shaw at al., 2011), based on the experience of Britain, suggests that the promotion of transparency and unpredictability in the short term can bring revenue growth, but it is always necessary to insist on transparency and precision as the main features of a fair and efficient tax system. Macro dimensions tax uncertainty manifests itself in several ways. As a rule, the tax regulations are incomplete or are complex in terms of a multitude of secondary legislation (regulations, decisions, instructions, etc.). Furthermore, uncertainty exists with regard to the final text tax regulations, since the drawing in tax regulations can be until the moment of the adoption of the modified amendments in Assembly procedure for adoption of regulation or under the pressure of citizens, certain lobbies (e.g., policy, producer, importers etc.) Or structures (civil society, business community, social partners, international institutions, etc.). Great uncertainty arises from the installation of temporary tax measures into law, with certain periods of validity (i.e. "Sunset law"). Short-term character of temporary tax payers measure limits the possibility of adapting business policy, especially when it comes to vague measures with poorly explained the objectives and expected effects of the introduction. The IMF and OECD (IMF, OECD, 2017) suggests that the existence of temporary tax measures may not be substantially detrimental to the taxpayers, but also situations where these measures are not clear or credible, or if there is uncertainty about the possibility of their extension,

since the law allowed such a possibility. Tax uncertainty increases when the tax rules differently change. Tax Administration consist of a large number of organizational units, especially if there are more administrative and political units within the country. In such circumstances it is often tax rules are not applied in a uniform manner. Tax payers for vagueness increases the expansion of operations in third countries and on the integration, such as the EU, where inequality exists in the adaptation.

## 2.2. Sources of tax uncertainty

Sources of tax uncertainty may be the national and international (Zangari and others, 2017). In terms of the characteristics of the tax sources of uncertainty are legal, economic, political, institutional and administrative nature. The main sources of national tax uncertainties are legal character - inaccurate tax legislation and policy – frequent changes in tax policy. Zangari and others (Zangari at al., 2017) point out that the preparation and implementation of tax reforms, with subsequent adjustments and changes, often bringing large tax uncertainty, which is effected in the additional costs of compliance. In addition to procedural issues related to the adoption of tax regulations legal causes of tax uncertainties are insufficiently precise legal provisions, the appearance of conflict rules and different interpretations of legal norms of the tax administration, tax payers and courts, which escalate the passage of time the application of regulations (Zangari at al., 2017). Any intervention on the tax legislation, as an adjustment after they have shown negative effects of the regulations or as a phase in the implementation of complex tax reforms require amendment of the Rules on the application of laws and amendments or adoption of new bylaws. In the case of imprecise legal provisions and the absence of relevant rules, instructions and explanations, the inevitable consequence is a different interpretation of tax regulations, which will result in an increase in the number of cases before national courts, in the case of the EU case against the members before the Court of the EU. Pagone (Pagone, 2009) indicates the occurrence of deliberate vagueness of the law. He suggests that the discretionary powers of the tax laws should be a structured, delimited, subject to review and predictable. The IMF and OECD (IMF, OECD, 2017) suggests that quality tax legislation if changing the tax treatment of existing investments should be sure to include transitional provisions to be implemented in phases over a certain period after the start of implementation of the new regulations /policies/measures, i.e. after the abrogation of the previous regulations/rules/measures, in order to achieve credibility, security and stability of tax rules.

Even the most perfect tax law can produce vagueness among taxpayers if poorly implemented by the tax administration. For the IMF and OECD (IMF, OECD, 2017) tax administration plays a central role in the implementation of tax regulations, as a key channel for the creation of an appropriate tax system. In addition, coherent legislation can contribute to the security of the tax if it is not accompanied by a coherent, fair and effective implementation. The realization of the law enabled tax relief in taxation of income and profits or the right of VAT return even in developed countries can be significantly hampered by the tax administration because of its complex administrative rules and procedures, which can often deter persons from the consumption law that allows them to law. Similarly, the vagueness of the tax increases and inconsistent application of tax rules by the tax administration, especially concerning the discretionary granting tax incentives, tax treatment and control procedures and auditing. The IMF and OECD (IMF, OECD, 2017) point to the negative impact of poorly planned and implemented control procedures and audits, which are reflected in the drawn-out periods of audits, long disputes, the large number of unresolved disputes, large discrepancies in the results of the audit, all of which brings

cionalnog korištenja resursa, stigmatizacije regularnih obveznika i, u cjelini, jačanja nepovjerenja prema poreskim vlastima i poreske neodređenosti obveznika. Složena unutrašnja organizacija i interna pravila nagrađivanja inspektora u poreskim administracijama koja stimuliraju inspektore da utvrde dodatne poreske obaveze često povećavaju rizik nekoherentne i različite primjene poreskih propisa.

MMF i OECD (IMF, OECD, 2017) ukazuju na neodređenost koju proizvodi mehanizam rješavanja sporova u sferi poreza. Dugotrajnost u vođenju sporova ne samo da može prouzročiti teškoće u poslovanju, već mogu odvratiti i investicije. Poreska neodređenost nastaje ukoliko u kontinuitetu postoje razlike između stajališta sudova, na jednoj strani, i zakonodavca i poreskih administracija, na drugoj strani, u pogledu tumačenja poreskih propisa. Dugi postupci pred sudom ne samo da unose veliku neodređenost u poslovanje obveznika, već i proizvode značajne troškove vezano za troškove suda, advokata i ostale troškove u vezi s postupkom, što u najvećoj mjeri pogađa mala i srednja preduzeća, kojima pravna zaštita de facto postaje nedostupna. Konačno, praksa da se odluke sudova ne objavljuju, kao i neobjavlivanje zvaničnih stajališta poreske administracije u vezi s primjenom poreskih propisa, može pogoršati poresku sigurnost za obveznika.

Institucionalni uzroci pojave poreske neodređenosti odnose se na slabosti institucionalnog poreskog okvira, u pogledu kreiranja poreske politike, administriranja i kontrole/nadzora. Poreska neodređenost nastaje i zbog namjernog izbjegavanja poreza od strane obveznika koji koriste nejasnoće ili dvosmislenosti zakona. U tom slučaju, rezultat je potpuno neizvjestan, ali je na obvezniku odgovornost, budući da je on odabrao način djelovanja koji očigledno može biti u sukobu sa namjerama zakonodavca (Piper, 2014). Budući da namjerna poreska neodređenost, koja je kreirana od strane obveznika, ugrožava naplatu prihoda, vlada će, jednom kada se uoče takve okolnosti, nastojati da dodatnim poreskim mjerama otkloni tzv. rizik naplate prihoda trezora ("exchequer risk"). Restriktivne poreske mjere vlade u cilju suzbijanja poreske evazije obično idu na teret ostalih obveznika koji žele da izbjegnu poreske rizike, tako da, u konačnici, vladina kontramjera, koja podrazumijeva transformaciju rizika za trezor u rizik za regularne obveznike, dovodi do nepotrebnih troškova za društvo (Piper, 2014). Nefleksibilnost poreskog sistema u uslovima brze promjene okruženja, bilo nacionalnog, bilo međunarodnog, donosi veliku dozu poreske neodređenosti. Snažni upliv digitalizacije u poslovanje kompanija unosi veliku neizvjesnost u pogledu poreskih pravila koje obveznik treba da primijeni. U takvim okolnostima, neizvjesno je i postupanje nadležne poreske administracije. Situaciju dodatno pogoršava slabo poznavanje međunarodnog poslovanja i nedostatak specifičnih znanja iz te oblasti u poreskim administracijama.

MMF i OECD (IMF, OECD, 2017) ukazuju na to da se izvor poreske neodređenosti može naći i u ponašanju obveznika. Neki obveznici preduzimaju agresivne poreske strategije, izbjegavajući transparentnost u komunikaciji sa poreskom administracijom, testirajući granice do kojih mogu da idu. Poreska sigurnost je ugrožena i ukoliko obveznik nema jasno izražene strategije poreskog planiranja ili nema jasno definirano postupanje u slučaju sprovođenja poreskih kontrola i revizije. Veću poresku neodređenost imaju i veliki poreski obveznici sa široko diverzificiranim poslovanjem, koje proizvodi različite poreske implikacije i predstavljaju izazov poreskoj administraciji u smislu primjene poreskih pravila. Shaw i dr. (Shaw et al. 2011) ističu da je linija razlikovanja zakonitog izbjegavanja poreza i poreske evazije nekada jako tanka i nejasna, što povećava stepen poreske nesigurnosti u pogledu utvrđivanja poreske obaveze. U takvim slučajevima, da li će obveznik uspjeti da umanji poresku obavezu ovisi o poreskoj administraciji, koja, ukoliko bude nesvjesna postupaka obveznika, neće nikada pokrenuti provjere.

Globalizacija poslovanja pojačava internacionalne uzroke poreske neodređenosti. Poslovanje na svjetskom tržištu podrazumijeva izloženost obveznika (kompanija i pojedinaca) različitim poreskim sistemima. Zangari i dr. (Zangari et al., 2017) uočavaju statičku i dinamičku dimenziju poreske neodređenosti. Statički aspekt se ogleda u tome da se kompanije i pojedinci suočavaju sa različitim poreskim sistemima na međunarodnom planu poslovanja. Poreska neodređenost se povećava, jer se izmjene poreskih propisa multipliciraju širenjem poslovanja u više država. Frekventnost izmjena poreskih propisa se dodatno povećava, jer se države bore da povoljnijim poreskim režimima privuku strane investitore i kapital ili da kompanije presele svoja sjedišta. Međunarodna poreska konkurencija u cjelini povećava poresku neodređenost ne samo za sve druge obveznike, već i za ostale države s obzirom na naplatu poreskih prihoda. Države pokušavaju dodatnim poreskim mjerama da zaustave bijeg kompanija i profita, a time i poreza koje plaćaju kompanije i pojedinci. Mjere za povećanje poreske atraktivnosti država i kontramjere pogođenih država u konačnici dodatno usložnjavaju oporezivanje i na nacionalnom i na međunarodnom planu, povećavajući poresku neodređenost. Navedeni problemi mogu se prevladati jačanjem saradnje država u sferi poreza i ekstenzivnom razmjenom podataka relevantnih za oporezivanje sa drugim državama (Antić, 2015). Postojanje interakcije između poreskih zakona i neporeskih propisa i sporazuma može kreirati neodređenost, pogotovo kada se radi o međunarodnim neporeskim ugovorima koji mogu imati implikacije na poreski tretman.

### 3. TRADE-OFF IZMEĐU PORESKE ODREĐENOSTI I NEODREĐENOSTI

Piper (Piper, 2015) smatra da prilikom pokretanja poreskih reformi treba kao "prethodno pitanje" postaviti koji su društveni ciljevi poreske reforme, odnosno da li se određeni ciljevi mogu ostvariti instrumentima izvan poreskog sistema. Na primjer, mnogobrojne studije pokazale su da se ciljevi socijalne politike, u smislu redistribucije dohotka prema siromašnijim slojevima, mogu efikasnije ostvariti budžetskom mjerom – ciljanim dotacijama građanima iz budžeta nego poreskom mjerom – uvođenjem diferenciranih stopa PDV-a na određena dobra. U suprotnom, dodatno povećanje kompleksnosti PDV sistema će dovesti do poreske nesigurnosti i na strani obveznika i na strani poreske administracije, pogotovo u postupanju sa dobrima koja se nalaze u "sivoj zoni" diferenciranja stopa. Ipak, iskustva drugih zemalja, pogotovo članica EU, pokazuju da se pitanje da li postoje bolji mehanizmi od poreskih ignoriralo zbog uticaja politike, koji je snažan u tolikoj mjeri da ni nakon velikog broja studija nema političke volje da se diferencirano oporezivanje potrošnje ukine ili svede na minimum.

Eksperti (Stewart, Picciotto, 2017) smatraju da apsolutna poreska sigurnost nije ni poželjna sa stajališta interesa javnosti. Slično, Thorndike (Thorndike, 2015) smatra da su rasprave nepotrebne iz dva razloga. Prvo, sigurnost i izvjesnost ne postoje ni u životu niti u poreskim zakonima. Ekonomija je samo jedan dio nesigurnog života. Drugo, zahtjev za ostvarenje sigurnosti štiti status quo u poreskom sistemu, što svakako nije u interesu ni poreskih vlasti, a niti obveznika i građana u konačnici. Iako ljudi teže za stabilnošću i trajnošću, sigurnost je iluzija. Imajući u vidu snažan uticaj političkih lobija na donošenje poreskih propisa, revizija poreske politike je poželjna s vremena na vrijeme. Isto tako, vrlo često postoje objektivne okolnosti koje nalažu izmjene propisa iz područja oporezivanja. Diskrecione mjere poreske politike, koje se efektuiraju tek nakon okončanja određene pravne procedure za donošenje poreskih propisa, često

great vagueness among taxpayers. The traditional polarization of the tax administration and taxpayers that all payers prone to fraud, and that all inspectors put pressures on bonds, leading to unnecessary exposure to costs and irrational use of resources, stigma regular payers and, as a whole, strengthening mistrust towards the tax authorities and tax uncertainty payers. The complex internal organization and internal rules of remuneration of inspectors in tax administration that stimulate inspectors to determine additional tax liabilities frequently increase the risk of incoherent application of different tax regulations.

The IMF and OECD (IMF, OECD, 2017) point to the uncertainty produced by a mechanism to resolve disputes in the sphere of taxes. Longevity in managing disputes can not only cause difficulties in the business, but may deter investment. Tax uncertainty arises if there are differences between the courts, on the one hand, and of the legislator and tax administration, on the other hand, as to the interpretation of tax regulations. The other proceedings before the Court not only bring great uncertainty in business taxpayers, but also produce significant costs related to court costs, attorney fees and other expenses related proceedings, which mainly affects small and medium-sized enterprises, which legal protection of *de facto* becomes unavailable. Finally, the practice of the courts' decisions are not published, as well as withholding official standpoint of the tax administration regarding the application of tax regulations, may worsen security for tax payers.

The institutional causes of tax uncertainty related to the weakness of the institutional framework of the tax, in terms of creating tax policy, administration and control / monitoring. Tax uncertainty arises due to willful tax evasion by taxpayers who use the uncertainty or ambiguity of the law. In this case the result is totally uncertain, but it is the responsibility of the taxpayer, since he chose the course of action that obviously could be in conflict with the intentions of the legislator (Piper, 2014). Since the deliberate uncertainty of the tax, which was created by the taxpayers, threatens revenue collection, the government will, once notice of such circumstances, seek to additional tax measures to eliminate the so-called. The risk of revenue collection Treasury ("exchequer risk"). Restrictive tax measures the government in order to combat tax evasion usually go to the expense of other taxpayers who want to avoid the tax risk, so that, ultimately, the government's counter-measures, which involves the transformation of the risk of treasury in risk for regular payers, leading to unnecessary costs for society (Piper, 2014). The inflexibility of the tax system in terms of the rapid changes in the environment, whether national, or international, brings a great deal of tax uncertainty. The powerful influence of digitization in the company introduces a large uncertainty about the tax rules that the taxpayer must be applied. In such circumstances, it is uncertain and the treatment responsible tax administration. The situation is further exacerbated by poor knowledge of international business and the lack of specific knowledge in this field in the tax administrations.

The IMF and OECD (IMF, OECD, 2017) suggests that the source of tax uncertainty can be found in the behavior of taxpayers. Some taxpayers are taking aggressive tax strategies, avoiding transparency in communication with the tax administration, testing the limits to which they can go. Tax security is endangered, if the taxpayer is not clearly expressed strategy of tax planning or no clearly defined procedure in case of implementation of tax controls and audit. Higher tax uncertainty have large taxpayers with a widely diversified business, which produces various tax implications and present a challenge to the tax administration in terms of the application of tax rules. Shaw and others. (Shaw at al.2011) point out that the line distinguishing tax avoidance and tax evasion is sometimes very thin and vague, which increases the level of tax uncertainties regarding the determination of the tax liability. In such cases, if the

taxpayer fail to reduce tax liability depends on tax administration, which, if unconscious processes taxpayers will never run checks.

Globalization increases the international business tax causes uncertainty. Conducting business on the international market entails exposure payers (companies and individuals) different tax systems. Zangari and others (Zangari at al., 2017) observed static and dynamic dimension of tax uncertainty. The static aspect is reflected in the fact that companies and individuals are confronted with different tax systems at the international level operations. Tax increases vagueness, because changes in tax regulations multiplying the expansion of operations in several countries. The frequency changes in tax regulations is further increased because the country struggling to favorable tax regimes to attract foreign investors and capital, or that companies move their headquarters. International tax competition in general vagueness tax increases not only for all other taxpayers, but also for other countries with regard to the collection of tax revenues. States are trying additional tax measures to stop the escape of companies and profits and thus taxes paid by companies and individuals. Measures to increase the tax attractiveness of the country and counter-measures affected States ultimately further complicated taxation and on the national and international levels, increasing tax uncertainty. These problems can be overcome by strengthening cooperation between the countries in the sphere of taxation and extensive exchange of data relevant for taxation with other countries (Antić, 2015). The existence of interactions between tax and non-tax law regulations and agreements may create uncertainty, especially when it comes to international non-tax treaties which may have implications on the tax treatment.

### 3. TRADE-OFF BETWEEN TAX SPECIFICITY AND UNCERTAINTY

Piper (Piper, 2015) think that when you start tax reform should be a "previous question" who set the social objectives of the tax reform, or whether a particular instrument aims can be achieved outside the tax system. For example, numerous studies have shown that the objectives of social policy in terms of redistribution of income to the poorer strata, can effectively achieve budgetary measures – targeted grants for citizens from the budget, but the tax measure - the introduction of differentiated VAT rates on certain goods. Otherwise, further increasing the complexity of the VAT system will lead to tax uncertainties on both the taxpayer and the tax administration, particularly in the treatment of goods that are in the "gray zone" differentiation rate. However, the experience of other countries, especially EU members, show that the question of whether there are better mechanisms of tax ignored by political influence, which is powerful to the extent that even after a large number of studies there is no political will to differentiated taxation of consumption abolished or reduce to minimum.

Experts (Stewart, Picciotto, 2017) believe that absolute security is not tax is not desirable from the standpoint of the public interest. Similarly, Thorndike (Thorndike, 2015) believes that the debate unnecessary for two reasons. First, the security and certainty does not exist, neither in life nor in tax laws. The economy is only one part of the precarious life. Secondly, the requirement for the achievement of security protects the status quo in the tax system, which is certainly not in the interest of neither the tax authorities nor taxpayers and citizens in the end. Although people tend to stability and durability of security is an illusion. Bearing in mind the strong influence of political lobbies in the adoption of tax legislation revision of tax policy

nisu efikasne zbog sporosti reagiranja. Štaviše, efekti diskrecionih mjera su često zakasnili, nekad i kontraproduktivni, s obzirom na postojanje vremenskog razmaka između momenta uočavanja potrebe za izmjenom poreskih propisa do momenta njihove implementacije i ispoljavanja prvih efekata mjera. Taj vremenski zaostatak (eng. time lag) „otupljuje“ očekivane efekte od novih poreskih mjera, jer se okolnosti koje su dovele do tih mjera u međuvremenu mogu značajno promijeniti. U tom smislu, zadržavanje status quo bi donijelo velike štete i mikroekonomskom i makroekonomskom sistemu. Thorndike (Thorndike, 2015) smatra da je stabilnost poreskog sistema vrijedna samo ukoliko vlada želi očuvati status quo, a da je poreski sistem „živi institut, koji se konstantno razvija i koji je u stalnom previranju“. Isto tako, često se pod paravanom očuvanja stabilnosti poreskog sistema žele zadržati zadobijene preferencije i povoljniji poreski tretmani. Vrlo često se stabilnost zagovara samo iz straha da li će se poreske reforme uspješno implementirati. Piper (Piper, 2015) ukazuje na to da održavanje stabilnosti poreskog sistema ne smije podrazumijevati njegovu nefleksibilnost u odnosu na izazove iz okruženja. U te izazive možemo ubrojiti regionalne integracije, liberalizaciju, ekstenzivnu razmjenu poreznih informacija i globalizaciju. Nacionalni poreski sistem se ne smije posmatrati izolirano u odnosu na svijet, pogotovo u eri globalizacije. Sve snažnija saradnja razvijenih zemalja u svijetu dovodi do približavanja poreskih sistema, što povratno zahtijeva konstantna prilagođavanja nacionalnih poreskih sistema, a u zemljama u razvoju i implementiranja opsežnih reformi u nacionalnom poreskom sistemu.

U konačnici, Thorndike (Thorndike, 2015) zaključuje da je stabilnost neprijatelj poreskih reformi. Iako postoje objektivni rizici za poslovanje u slučaju promjene poreskih propisa, oni su uveliko precijenjeni. Prvo, obveznici već decenijama posluju u nesigurnom poreskom okruženju, a drugo, često su rizici veći u pogledu očuvanja vrijednosti poreskog objekta koji je predmet oporezivanja (dobit, dohodak, imovina), nego u vezi sa primjenom novih poreskih mjera. Neprilagođavanje poreskog sistema može ugušiti ekonomsku aktivnost i kreirati prostor za zloupotrebe, pogotovo kad se radi o agresivnom poreskom planiranju, čiju ekspanziju potiču različite poreske mjere koje usvajaju poreski rajevi ili države sa niskim poreskim stopama. Piper (2015) upozorava na potrebu brzog prilagođavanja vlada, imajući u vidu da se svijet mijenja jako brzo, mnogo brže nego što zakonodavci mogu izmijeniti poreske propise i preporučuje da se prilikom kreiranja kratkoročnih mjera odustane od traganja za savršenim rješenjima, a da se fokus usmjeri na implementiranje strukturalnih poboljšanja poreskog sistema u dugom roku.

MMF i OECD (IMF, OECD, 2017) predlažu brojne mjere za jačanje poreske određenosti. U segmentu dizajna poreske politike i legislative sugeriraju razradu procesa konsultacija u kojem ključnu ulogu ima ministarstvo finansija. Opseg konsultacija uključuje i poresku administraciju, privatni sektor i civilno društvo, te eksterne eksperte iz sfera industrije i trgovine. Konsultacije u vezi s novim poreskim propisima ili izmjenama postojećih treba da budu javne i treba da počnu još u inicijalnoj fazi. Nakon implementacije novih poreskih propisa, potreban je monitoring efekata i određeni feedback, kao kritičan moment za identificiranje potrebe prilagođavanja propisa uz izradu odgovarajućih administrativnih uputstava. Da bi se osiguralo da novi propisi ili njihove izmjene budu jasne svim korisnicima, potrebno je prilikom izrade nacrtu zakona ili izmjena zakona držati se osnovnih načela normiranja poreskih propisa kao što su razumljivost, organizacija (unutar teksta propisa i koordinacija sa drugim zakonima), efektivnost (osiguravajući ciljeve poreske politike koji se žele ostvariti putem poreskog zakona), integracija (konzistentnost sa pravnim sistemom i pravilima normiranja) i transparentnost

(ispravno strukturiranje odredaba zakona i njihovo odvajanje od proceduralnih pravila). U segmentu aktivnosti koje bi trebalo da preduzme poreska administracija u cilju smanjenja poreske neodređenosti, fokus bi trebalo da bude na transparentnoj komunikaciji sa obveznicima kako bi se izbjegli sporovi u vezi sa primjenom zakona ili sveli na minimum. Potreban je viši stepen kooperativnosti, koji uključuje detaljna uputstva i smjernice za primjenu poreskih propisa, edukaciju obveznika, komunikaciju s obveznicima tokom kontrola i revizija. Potrebno je kreirati mehanizme za efikasno i blagovremeno rješavanje sporova, kako na nacionalnom nivou, tako i na međunarodnom planu. Teret dokazivanja u vezi sa žalbom na razrez obaveze treba biti na obvezniku, dok teret dokazivanja izrečene može biti na poreskoj administraciji kako bi demonstrirala opravdanost njenog izricanja.

MMF i OECD (IMF, OECD, 2017) preferiraju smanjenje poreske neodređenosti pomoću odgovarajućeg mehanizma konsultacija o predloženoj legislativi. Međutim, eksperti (Stewart i Picciotto, 2017) smatraju da mehanizam konsultacija može lako da se pretvori u lobiranje, koje je nepoželjno sa stajališta ostvarenja ciljeva građana. Piper (2014) zaključuje da je nužno da granice poreske neodređenosti budu što jasnije utvrđene, te da svako korištenje diskrecionih prava od strane vlade da bi se nametnula nova poreska mjera treba biti pojašnjeno uputstvima.

Preporuke EU podrazumijevaju inicijative na nacionalnom i međunarodnom planu. Na nacionalnom planu potrebno je težiti što jednostavnijem poreskom sistemu, u pogledu pravila oporezivanja kojima se utvrđuje poreska obaveza i obaveza u vezi sa administriranjem poreza od strane obveznika, te procesu izrade poreskih propisa (Zangari i dr., 2017). Institucionalni proces upravljanja razvojem poreske politike treba biti transparentan i predvidljiv. Potrebno je unaprijediti komunikaciju između poreskih administracija i obveznika. Potrebna su i jasna pravila vezano za izdavanje poreskih mišljenja (pogotovo ex ante), koja će biti konzistentna sa načelima fer poreske konkurencije između zemalja. Na međunarodnom planu, ključni faktori jačanja poreske sigurnosti jesu bolja saradnja i koordinacija između zemalja u sferi poreza. EU je, zajedno sa OECD, pokrenula projekt BEPS,<sup>3</sup> koji bi trebalo da spriječi seljenje dobiti u poreske rajeve i jurisdikcije sa povoljnijim poreskim tretmanom. Temeljni instrument za uspostavu globalne koordinacije u sferi poreza jeste automatska razmjena informacija relevantnih za razrez poreza, kao pretpostvka za efikasnije suočavanje država sa izazovima iz okruženja, poput agresivnog poreskog planiranja, globalne ekonomske i političke nesigurnosti, razvoja novih modela poslovanja sa naglaskom na ekspanziju digitalne ekonomije.

## ZAKLJUČAK

Holistički pristup dizajnu poreskih sistema nalaže inkorporiranje načela oporezivanja na nivou sistema, dok je na nivou pojedinačnih poreskih oblika dozvoljeno odstupanje od pojedinih načela u cilju ostvarenja maksimalne efikasnosti poreskog oblika. Analiza je pokazala da, i pored svih nastojanja fiskalnih vlasti, nije moguće ostvariti apsolutnu određenost u sferi oporezivanja. Razlog je neizvjesno ekonomsko okruženje koje se ne može u cijelosti predvidjeti, a koje utiče na poresku obavezu. Isto tako, nije realno očekivati da se u poreskim propisima ne nađe niti jedna nejasnoća, dvosmislenost ili nepreciznost ili da će poreska administracija primjenjivati poreske propise bez i jedne pogreške. Može se zaključiti da je određena neodređenost poreza neizbježna. Od vlada se očekuje da vode računa o tome da poreski rizici zbog neodređenosti poreza predstavljaju

<sup>3</sup> Base Erosion and Profit Shifting.

is desirable from time to time. Also, quite often there are objective circumstances which require changes to regulations in the field of taxation. Discretionary tax policy measures, which are effected only after the completion of certain legal procedures for the adoption of tax rules, are often not effective due to slow response. Moreover, the effects of discretionary measures are often delayed, sometimes even counterproductive, given the existence of a time lag between the moment of noticing the need to amend tax legislation to the moment of their implementation and the manifestation of the first effects of the measures. This time lag (Eng. Time lag) “blunts” the expected effects of the new tax measures, because the circumstances that led to these measures in the meantime can change significantly. In this sense, maintaining the status quo would bring great damage and micro-economic and macro-economic system. Thorndike (Thorndike, 2015) considers that the stability of the tax system is worth only if the government wants to preserve the status quo, and that the tax system is “live institute, which is constantly evolving and that is in a constant state of flux”. Also, often under the cover of preserving the stability of the tax system want to maintain sustained preferences and favorable tax treatments. Very often advocated stability only for fear of whether the tax reform has been successfully implemented. Piper (Piper, 2015) indicates that the stability of maintenance tax system may not imply a lack of flexibility in relation to the challenges from the environment. The Causes and we can include regional integration, liberalization, extensive exchange of tax information and globalization. The national tax system should not be considered in isolation to the world, especially in the era of globalization. Stronger cooperation between developed countries in the world leading to a convergence of tax systems, which in turn requires a constant adjustment of national taxation systems, and in developing and implementing comprehensive reform of the national tax system.

Ultimately, Thorndike (Thorndike, 2015) concluded that the stability of the enemy of tax reform. Although there are objective risks for the business in the event of changes in tax regulations they are greatly overstated. First, the taxpayers for decades operating in an uncertain tax environment, and secondly, risks are often greater in terms of preserving the tax value of the object of taxation (profit, income, assets), but in connection with the implementation of new tax measures. Failure to adapt the tax system can stifle economic activity and create room for abuse, especially when it comes to aggressive tax planning, of which encourage the expansion of the various tax measures adopted by tax havens or countries with low tax rates. Piper (2015) draws attention to the need to adapt quickly to the government, bearing in mind that the world is changing very fast, much faster than legislators can amend tax regulations and recommends the creation of short-term measures abandon the quest for perfect solutions, and to sharpen the focus to implement structural improvements of the tax system in the long run.

The IMF and OECD (IMF, OECD, 2017) proposed a number of measures to strengthen tax determination. In the area of tax policy design and legislation suggest the elaboration of a consultation process in which a key role is played by the Ministry of Finance. The scope includes consulting and tax administration, the private sector and civil society, as well as external experts from the spheres of industry and trade. Consultations on the new tax regulations or amendments of existing should be public and should do more in the initial phase. Following will implement the new tax regulations require monitoring the effects and specific feedback as a critical moment for identifying the need to adjust regulations to the development of appropriate administrative instructions. To ensure that new regulations or amendments to them

are clear to all users need it when drafting laws or amended laws to keep to the basic principles of standardization of tax legislation such as clarity, organization (within the text of regulations and coordination with other law), effectiveness (ensuring tax policy objectives to be achieved through the tax law), integration (consistent with the legal system and the rules of standardization) and transparency (the correct structure of the provisions of the law and their separation from the procedural rules). In the segment of activities that should take the tax administration to reduce tax uncertainty focus should be on transparent communication with taxpayers in order to avoid disputes regarding the application of laws or kept to a minimum. It takes a higher level of cooperation that includes detailed instructions and guidelines for the application of tax regulations, training of taxpayers, and communication with payers during the control and audit. It is necessary to create mechanisms for effective and timely resolution of disputes, both at the national level and internationally. The burden of proof regarding the appeal on cutting duties should be the taxpayer, while the burden of proof can be imposed on the tax administration in order to demonstrate the reasonableness of its imposition.

IMF and OECD (IMF, OECD, 2017) favored by the reduction of the tax uncertainty by an appropriate mechanism on the consultation with the proposed legislation. However, experts (Stewart and Picciotto, 2017) believe that the consultation mechanism could easily be turned into lobbying, which is undesirable from the standpoint of achieving the objectives of the citizens. Piper (2014) concludes that it is essential that border tax uncertainty are as clearly identified and that any use of discretionary powers by the government to impose new tax measures should be clarified instructions.

Recommendations include EU initiatives on national and internationally. At the national level it is necessary to aim at a simpler tax system, in terms of tax rules that determine tax liabilities and obligations in connection with the administration of taxes by the taxpayer, and the process of drafting tax legislation (Zangari and others. 2017). Institutional management process development of tax policy should be transparent and predictable. It is necessary to improve communication between the tax administration and taxpayers. It also needs clear rules regarding the issuance of tax opinions (especially *ex ante*) to be consistent with the principles of fair tax competition between countries. At the international level, the key factors of strengthening tax security is better cooperation and coordination between countries in the sphere of taxes. EU, together with the OECD launched a project BEPS<sup>3</sup>, which should prevent migration gain in tax havens and jurisdictions with more favorable tax treatment. The basic instrument for the establishment of global coordination in the sphere of taxation is the automatic exchange of information relevant for tax assessment, as a presumption of effective coping country with the challenges of the environment, such as aggressive tax planning, global economic and political uncertainty, the development of new business models with a focus on the expansion of the digital economy.

## CONCLUSION

Holistically approach to the design of the system requires the incorporation of tax principles of taxation on system level, while the level of individual forms of taxes allowed to deviate from the principle of the individual in order to achieve maximum efficiency of the tax forms. The analysis shows that despite all the efforts of fiscal authorities is not possible to achieve absolute certainty in the

<sup>3</sup> Base Erosion and Profit Shifting.

trošak poslovnoj i društvenoj zajednici. Nužno je da vlade balansiraju načela oporezivanja prilikom dizajniranja poreskog sistema ili planiranja poreskih reformi na način da se žrtvuje maksimalno mogući stepen poreske određenosti zbog političkih, ekonomskih ili socijalnih ciljeva. Ovakav pristup potreban je zbog odgovora vlada na brze promjene u okruženju, a pogotovo u vrijeme ekonomskih kriza kada se od vlade očekuje da bude fleksibilna i da brzo donosi antikrizne mjere.

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sphere of taxation. The reason is the uncertain economic environment which can't be fully predicted, which affects the tax liability. Also, it is not realistic to expect that the tax legislation finds no ambiguity, imprecision or ambiguity, or that the tax administration applied tax legislation without a single error. It can be concluded that a certain uncertainty taxes inevitable. Governments are expected to take into account that tax risks due to uncertainty taxes are a cost of business and social environment. It is essential that governments balance the principles of taxation when designing a tax system or planning tax reforms in a way that sacrifices the maximum possible degree of tax certainty for political, economic or social objectives. This approach is necessary because of the government response to the rapid changes in the environment, especially in times of economic crisis when the government is expected to be flexible and to make quick anti-crisis measures.

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