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Abstract of the doctoral thesis:

Tax optimisation in business management of cross-border industrial organisations

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Tax optimisation in business management of cross-border industrial organisations

Keywords: aggressive tax optimization, cross-border arrangements, tax optimization schemes, legal optimization, transfer pricing, price manipulation, market price, transaction reconsideration, intra-group transactions, successive transactions, activity splitting, cross-border industrial organizations, foreign entities, fixed establishment, permanent establishment, non-resident affiliated entities

Motivation for the choice of theme, novelty, topicality and importance

Economic analyses have brought into the public arena the practice of multinationals to outsource profits with the consequence of not fulfilling tax obligations in Romania.

Aggressive tax optimization is one of the most harmful practices used by cross-border industrial organizations on the Romanian market (multinationals with production and marketing activities in several countries) with the aim of reducing/minimizing tax liabilities.

The subject of tax optimisation is a concern mainly of the OECD and the EU, but also of countries that are interested in taxing profits from the exploitation of their own soil, subsoil, energy, human and material resources, as in the case of Romania.

The fierce tax competition between countries, ensuring a competitive market without distortions requires a thorough analysis in our country too in order to take measures to protect tax revenues through an efficient and competent tax administration.

Timeliness of the choice of topic - Since there is as yet no in-depth research into the manner, techniques and methods/schemes by which this practice is possible, and these "standardised" schemes by tax consultants constitute a (professional) secret contracted by the consultancy with multinationals, my professional experience in accounting and tax matters has given me the opportunity to contribute through research and analysis of aggressive tax optimisation to understanding the mechanism and identification of legislative gaps (which require bold approaches) as well as analysing the possibilities of considering */ reframing the transactions / activities* of multinationals where there is a lack of economic substance to these transactions.

The purpose of this paper is to research and analyse the broad topic of the thesis:

- through a *theoretical approach* (definitions, concepts, practical tax concepts, strategies, laws, reports) to tax regulations regarding the conduct of activities in Romania by cross-border/multinational industrial organisations, from tax registration to aggressive taxing/optimising/non-taxing of profits;
- through *an empirical,* applied *approach* consisting of identifying and researching methods, techniques, legislative and administrative gaps, resources used in schemes and business models, standardisation of these schemes aimed at obtaining tax advantages.

On the basis of these theoretical and empirical approaches, we have investigated how legal tax optimizations - with the consent of the competent body - can be achieved, but we have also analyzed the consequences of using aggressive tax planning, both from the point of view of the management that implemented the business model and tax registration, and from the point of view of the possibility and risk of requalification/reconsideration of transactions/activities by the tax bodies of ANAF - with tax inspection and control powers.

The paper provides opportunities to analyze cross-border intra-group transactions and aggressive tax optimization schemes implemented and practiced by multinationals both from

the perspective of the competent tax authorities in Romania (ways to reframe and reconsider transactions and economic activities) and from the perspective of these firms (analyzes the risks and penalties that the implementation of the business model entails as a consequence of aggressive tax planning, cross-border arrangements and tax avoidance/non-payment). The paper analysed the factors that determined the emergence, evolution and consequences of the phenomenon of aggressive tax optimisation practised by some multinationals as well as the possibilities of ensuring a fair legal framework, competitive between local and multinational firms, with the aim of eliminating the outsourcing of untaxed profits for the activity carried out in Romania. Legal tax optimisation tools are also presented.

The paper does not provide a macro-economic analysis of the consequences of aggressive tax optimization at the general level of EU and non-EU countries, but *practically investigates, from a tax point of view, the business models* of tax law subjects in EU and non-EU countries, as standardized and implemented at the level of each entity and at the level of the multinational group of companies, by which taxes are avoided. This makes the subject matter unique and original.

The paper is a topical study of the phenomena of aggressive tax planning and provides a starting point for the study of tax optimisation schemes (which are incompatible with the legal and fiscal framework of the EU, but also of Romania), which make immoral use of legislative loopholes - legislative differences between states - and which need to be adapted in order to eliminate these inadequacies. In this respect, the current approaches resulting from carrying out business activities through undeclared permanent establishments / fixed establishments in Romania and taxing the profit in the country where the "activity" takes place are becoming subjects of debate between authorities, consultants and cross-border industrial organisations and may constitute "disputes" with direct, negative, substantial consequences on the business model.

In the form prepared by the author, the work can be a working tool for tax specialists, both from the authorities and taxpayers, and a starting point for further research based on the elimination of legislative gaps, the procedure of activities in the economic, legal, financial and tax fields, as well as study material for specialized university education on transfer pricing and outsourcing of profits practiced by foreign entities for the activity carried out in Romania.

The presentation of the paper is based on the author's own concept based on in-depth practical and theoretical knowledge as well as on experience gained through years of actual tax audits, participation in seminars, conferences, coordination of tax inspection actions in the field of transfer pricing, coordination of activities for performing risk analyses associated with transfer pricing risks and profit outsourcing to foreign entities.

As both stakeholders have an interest in working together and establishing mutual honest behaviour, knowledge as an effect of this research can lead to a stable business environment in Romania.

Written for tax professionals (tax inspectors, consultants, lawyers, business executives, etc.), the paper is nevertheless written to be understood by non-specialists in this field, analysing *the subject of tax optimisation* in a simplified manner, focusing on the main elements that contribute to understanding the subject and the research objectives - a complex field in reality and one that has significant consequences:

-non-collection of taxes and duties on transactions

-non-declaration/non-registration of economic activity in order to obtain tax advantages and externalisation of profit, in a dishonest, aggressive manner.

The exchange of information between tax authorities should identify companies that use optimisation mechanisms and schemes to obtain tax advantages by using successive intra-group transactions, as well as companies that use some formal criteria to give the

appearance of compliance with standard tax rules in the state where they operate and make profits.

Presentation of the current state of scientific research in the specialized literature

A country's tax policy must ensure free competition in the market, eliminate as far as possible and penalise actions that are not in the public interest, in particular those that avoid paying taxes in any form through market economy institutions.

"Aggressive tax optimization is one of the most damaging practices used by cross-border industrial organizations in the Romanian market (multinationals with production and marketing activities in several countries) with the aim of reducing/minimizing tax liabilities. The direct consequence of this optimisation is: obtaining higher (non-taxable) profits and transferring them for taxation in countries where the tax rate is lower, capitalising the company or increasing the dividends obtained by shareholders" [1][1].

At the same time, tax optimisation is a practice (which has become the rule) for companies with cross-border production activity, particularly with regard to generalised transactions between affiliated companies within the group. The specific nature of the production activity requires these firms to move their business to countries where labour is cheap, i.e. the wages paid to productive staff are extremely low (as is the case in Romania).

However, Tax arrangements, tax optimisation schemes practised by some multinationals directly affect competition in countries where they operate but are not resident, including Romania (or even if they are resident, they interpose successive intra-group transactions that are difficult to trace by the tax authorities of a state), through unethical practices in some cases of non-declaration of income and successive transactions using the Romanian value added tax (VAT) code (e.g. The practice of registering for VAT purposes - although in fact carrying out economic activity through undeclared fixed establishment - from the VAT point of view and even permanent establishment - in which case it does not attribute income and expenses to the state where it operates).

Scientific research papers in the area of aggressive tax optimization are not developed and we have not identified specific literature in this area.

The impact of tax optimisations is not known, nor the effects of tax evasion on the Romanian economy. However, "*if we look at the VAT GAP, Romania is facing massive VAT fraud through non-collection of VAT, both through non-declaration operations, but especially through operations based on transactions between affiliates, i.e. aggressive tax optimisations. The optimisation schemes practised make use of loopholes in national and international legislation, although Romania is a country with a skilled workforce, low labour costs and competitive taxation of profits, the average tax optimisation embraces standardised forms of profit externalisation"*[2].

Domestic and international legislation does not provide for additional constraints in the case of reconsideration of transactions through which tax advantages have been obtained (other than their reversal and the establishment of liability to the state).Thus there is no legal deterrent, no legal prevention of coercive measures, and in this way it has allowed tax optimisations to be practised on a large scale. Intra-group transactions are all the more evident and widespread,

[1] [1], [2]M. Manea - "*Aggressive tax optimization - reason for reconsidering/ reframing the activity of cross-border firms in Romania*", article published in Punctul Critic Magazine no. 1-2(39-40)/2022, Fundatia Culturala Publisher "Ideea Europeană", p. 132

significantly, in countries where administrative capacity (in terms of control institutions) is low or not focused towards this objective.

The paper analyses the factors that determined the emergence, evolution and consequences of the phenomenon of aggressive tax optimization practiced by some multinationals as well as the possibilities of ensuring a fair, competitive legal framework between local and multinational companies, with the aim of eliminating the outsourcing of untaxed profits for the activity carried out in Romania.

The difficult conditions faced by all countries and the tax competition between companies in the current difficult economic conditions put the spotlight on aggressive tax optimisation (elimination/reduction of taxes and duties) by multinationals.

The fragmentation of activity through tax registrations and successive intra-group transactions (intra-group transactions represent between 50-80% of commercial transactions between companies worldwide) results in a "duel" between the tax authorities of each country and the representatives of these specialised firms-consultants (lawyers, experts, consultants, etc.).

Through the implementation of the Directive DAC 6 analysed in the paper, Romania should be ready to face the challenge and to provide the most efficient measures for the collection of taxes and duties for the activity in Romania due by non-resident taxpayers, who are obliged to register and declare their activity according to the legislation in force and the double taxation conventions concluded with other states.

The institutions responsible for tax control of economic activities carried out by foreign entities in Romania should initiate the study of cross-border arrangements and make reasoned and well-justified proposals to eliminate the legislative loopholes that allow the avoidance/non-payment of tax obligations for profit-generating economic activities in Romania.

Investing the ANAF with the necessary material and human resources is the most important link in addressing, analysing, researching, processing and *limiting the negative effects of profit outsourcing*.

A negative aspect is that in some cases companies can become 'victims' caught in the middle between countries, being obliged to pay tax in both countries. However, the economic activity of companies should not be hampered by excessive tax controls that apply double taxation to companies, but should be encouraged by ensuring a transparent, fair and easy business environment in various areas of activity.

In this respect, a balanced and appropriate regulation of the way taxable profit is determined and declared in Romania is required.

The research contributes to the understanding of the mechanism of tax registration of foreign entities' obligations, declaration of economic activity for profit taxation and analyses the consequences of non-registration of activity as a result of tax controls by the authorities. The paper also presents the transposition and application of international regulations into national tax legislation and identifies the complicated premises in addressing the topic of profit outsourcing and taxation where the activity is carried out, in line with global recommendations and trends.

At present, the Multilateral Convention (MLI) - ratified by Romania as well, establishes other rules regarding treaties concluded, but introduces additional anti-abuse rules and clarification of the existence of permanent establishments based on the mutual agreement procedure between states, i.e. discussions between states to establish residence for the purpose of taxation of profits made.

It can be stated that during the research and the doctoral study no other scientific research could be identified from the perspective of practical aggressive tax optimization schemes whereby profits are outsourced outside Romania, but we can conclude with certainty based on

the experience of the researcher and the author of this research that the E.U. and the E.E.C.D. have addressed aggressive tax optimization globally by proposing recommendations in this regard.

"*Currently, the BEPS plan - Base Erosion and Profit Shifting - is a reaction of the states to this aggressive planning practiced by multinationals*"[2] , as we will analyze in the research.

Action 12 "*BEPS - Establishing rules for reporting aggressive taxpayer tax planning schemes*" is looking at identifying ways to outsource profits and transfer them to low tax areas. Romania does not yet have access to this analysis as it is not a full member of the O.E.C.D. Due to this fact, research in this field is almost non-existent, both due to lack of expertise and low administrative capacity (A.N.A.F.) in the transfer pricing area.

A controversial and highly publicised topic, tax avoidance based on aggressive tax planning by multinationals will always be a "hot potato" in the hands of both multinationals and national tax authorities.

The dynamics of developing business models should be coupled with a concomitant approach to finding and identifying solutions to counter tax avoidance and non-payment techniques in countries where economic activity and profits are made.

For a good understanding of the tax terms used to exemplify practical and theoretical cases, the paper makes references to the applicable legislation, concepts and definitions of terms.

Research objectives

The fundamental objective set at the beginning of the research is based on the need for knowledge in order to establish a legal, fiscal and administrative framework to support the implementation of aggressive tax optimization schemes practiced in the conduct of business and the choice/planning of the business model in order to obtain tax advantages, which is contrary to recent OECD and EU regulations (Directive - DAC 6).

Research objectives: ***TAX OPTIMIZATION - PROFIT EXTERNALIZATION***

1. addressing the issue of tax optimisation
2. presentation of the establishment and tax registration of foreign entities
3. exchange of information between States on intra-group transactions between entities
4. reporting of transactions by the counterparty/intermediary that are based on cross-border arrangements with the aim of obtaining tax advantages
5. sectoral analyses, by sector, of the business models practised in order to obtain tax advantages
6. empirical study of tax optimisation schemes and reconsideration/reframing of the activity carried out, resulting in: **profit externalisation and tax advantages**

[2]M. Manea - "*Aggressive tax optimization - reason for reconsidering/ reframing the activity of cross-border firms in Romania*", article published in the Punctul Critic Magazine no. 1-2(39-40)/2022, Fundatia Culturala Publisher "Ideea Europeană", p. 132

Fig. 1 Research objectives (author contribution)

Scientific originality - the whole paper (contained in chapters) is based on the substantiation and analysis of the most important notions, regulations, approaches, theories, based on own convictions, on the experience gained in the tax field, on the in-depth study of OECD and EU regulations and reports, as well as on the Romanian Tax Code and Tax Procedure Code: Tax registration (depending on the residence and legal personality of companies), transfer pricing, economic substance, abuse of law, exchange of information between Tax Administrations, business model schemes, case studies practiced in cross-border arrangements, analysis and identification of ways to reconsider transactions and activity carried out in Romania by cross-border industrial organizations in business administration.

Specification of the assumptions of the research

In the research we started from the following assumptions and premises:

-the significant impact of cross-border arrangements practiced by multinationals as an effect of intra-group price manipulation and the consequences of reconsidering transactions;

-legislative loopholes (omissions/inadvertences) that allow profit outsourcing;

- Base Erosion and Profit Shifting (BEPS) which have a direct impact on the approach to transfer pricing by resident and non-resident companies;

-domestic and international legislation- does not provide for additional constraints in the case of reconsideration of transactions through which tax advantages have been obtained (other than their reinstatement and the determination of the liability to the State);

-Companies must be prepared to choose the most appropriate method of transfer pricing, as required by legislation; manipulation of transfer prices is associated with a number of risks (strategic, operational, financial, transactional, hazard);

-tax inspections have intensified and have major implications for the business models implemented by multinational companies through aggressive, standardised tax planning;

-fulfilment of the reporting obligations to the competent tax authorities (ANAF) of cross-border tax arrangements resulting from successive intra-group transactions that avoid the payment of tax obligations and are aimed at obtaining tax advantages

-the study of legal tax optimisation allowing to eliminate the risks of reconsideration of intra-group transactions/activities in the business management of cross-border industrial organisations.

Research methodology

The research methodology is based on the analysis of the possibilities and modalities of tax registration of multinationals with the competent tax authority, of the legislative loopholes that allow tax registration by splitting the activity carried out in Romania, of the use of transfer prices as a mechanism for manipulating them in intra-group transactions (either increasing/ decreasing - depending on the subjective optimisation needs used by each cross-border industrial organisation).

The paper does not exhaust all the methods of analysis and research of the optimization schemes practiced by multinationals, but it is a first step in the research of the ways of externalization of profits from a different perspective and the possibility of its taxation in Romania.At the same time, it also provides specialists with knowledge of some strategies for keeping this phenomenon, which affects the collection of taxes and duties with reference to corporate tax and VAT (see GAP VAT), within normal limits. The work is also a tool for

companies regarding the risks of exposure to reconsideration of transactions or reconsideration of the activity carried out following tax inspections.

The research methodology used to achieve these objectives is based on fundamental theoretical and practical research in the field of planning, implementation of standardized cross-border arrangements (schemes) aimed at obtaining tax advantages and profit externalization, transfer pricing, understanding the transfer pricing mechanism in the practical approach in Romania, as well as the role and involvement of control authorities in this field, tax legislative loopholes that allow tax avoidance from tax registration/non-registration of the foreign entity to profit externalization for the activity carried out in Romania.

For this approach, we used the following research methods:

- *Documentation and analysis of specialist literature* (economics) and in areas with influence on transfer pricing (finance, audit, public administration, law, taxation), respectively national and international literature on the subject, as well as reports of the European Union, the European Commission, the Organisation for Economic Cooperation and Development (OECD), the National Institute of Statistics (INS), the National Agency for Tax Administration (ANAF), the Court of Accounts of Romania, the National Bank of Romania, international financial bodies, in order to provide a scientific basis for further research, reflected in the bibliographic/webliographic references;
- *Investigation and analysis of* several economic business models in various fields of activity (manufacturing, automotive, energy industry, electricity, etc.) which involves several stages, namely: collecting data and information, analysing and interpreting them, launching points of view and issuing recommendations;
- *Analytical, quantitative and qualitative method*, mainly carried out through practical case studies of both aggressive tax optimization and legal optimization;
- *The synthesis method*, which facilitates the clear establishment of connections between economic and fiscal processes and the elements studied, and allows conclusions to be drawn and risks to be quantified;
- *Interdisciplinary research method* - the research uses information from various fields: economics, finance, accounting, auditing, legal, mathematics, computer science and taxation.
- *The induction method*, by which one arrives at specific, particular phenomena and processes, scientific generalisations. In this way, economic reality is observed and repetitive economic phenomena are identified, which can be transformed into hypotheses with which economic theories can be formulated;
- *The method of deduction* starts from generalisations and ends with concrete, practical processes;
- *Descriptive method*, describing economic processes and theoretical concepts on cross-border trade aimed at obtaining tax advantages and externalising profits, transfer pricing;
- *The comparative method*, a frequently used method in economic research. Through this method we were able to identify the main theoretical and practical elements of transfer pricing, the involvement of the authorities in transfer pricing control, and to draw a parallel between the cases analysed in order to highlight similarities and differences of these; risks of reconsideration of companies' transactions/activities as a result of tax inspections and non-reporting to the tax authorities have been identified;

In the case studies, we used practical analysis of business models in various fields of activity, data from published reports on the impact of tax avoidance on the state budget.

Limitations of the research conducted in the PhD thesis

Any scientific approach implies, besides the contributions it can bring to knowledge in the field of research under analysis, also certain limitations that are absolutely inherent, as is the case of research on the topic of "tax optimization":

- Taking into account the insignificant studies in the foreign literature in the field concerned, and the fact that the national literature does not address the issue of cross-border arrangements, the exhaustive study required a methodology to limit the scope of analysis to help achieve the proposed objective
- There is a possibility that the cross-border schemes and arrangements under review may be analysed due to the inherent subjectivity of the researcher in these situations (e.g. areas, research, developments, perspectives).

Being a controversial and sensitive subject, profit outsourcing through cross-border arrangements is the prerogative of specialists and multinationals, involving professional secrecy and significant amounts of money for the implementation of such tax avoidance schemes.

The theoretical and practical investigation of the mechanism of budget fraud through non-payment of corporate income tax in Romania for transactions between affiliated persons and VAT refund for the same transactions between affiliates can have direct and significant consequences by initiating mechanisms to close loopholes and implement methods and procedures for reconsideration/reconciliation of transactions of activity between affiliates by strengthening the administrative capacity of the Romanian Tax Authority. "*To date, no research has been addressed on schemes through which profits are outsourced and tax advantages are obtained based on cross-border arrangements in Romania*"[3] , this is in fact the uniqueness of this paper.

Strengthening the administrative capacity of the control institutions (including here the IT system - digitalization, measures to review tax legislation and limit transactions between affiliates, reporting of transactions between affiliates) and last but not least the establishment of the Tax Tribunal, can limit the transfer of profit abroad (and untaxed although it is the result of material resources of the soil and subsoil of the Romanian labor force, etc.) and the capitalization of local firms through reinvestment of profits, with the consequence in the collection to the state budget of additional revenues from taxes.

This paper aims to analyse and clarify the tax optimisation of transnational industrial organisations, an important approach to profit outsourcing, by analysing the activities carried out in Romania by multinational entities. In order to understand and disseminate correctly and transparently the tax optimisation schemes through which profits are outsourced without being taxed, it is necessary to first identify the possibility of establishing and registering the activity of the entities for tax purposes with the competent tax body and to analyse, in their sequence, the intra-group transactions and the transfer price charged.

General theoretical considerations

Etymologically, the notion of "*optimisation*" means "the *choice and application of the optimal (economic) solution (among several possible ones*)"[4], and comes from the term - *optimiser* - in the sense of making the efficiency of a technical system, a machine, etc. optimal,

[3]M. Manea - "*Aggressive tax optimization - reason for reconsidering/ reframing the activity of cross-border firms in Romania*", article published in the magazine Punctul Critic no. 1-2(39-40)/2022, Ed. Cultural Foundation "Ideea Europeană", p. 133

[4] Dex online

to meet higher demands. Anglo-Saxon law uses the concept of "*optimal* taxation"[5] in the sense of a model for balancing the economy and the result of this taxation.

Tax optimisation by manipulation[6] - or "*la veritable evasion fiscale*" in French literature - is based on the use by multinationals of loopholes, omissions/inadvertences in tax legislation to reduce taxes or to avoid paying them in full, either by omitting a legal text or by not correlating the legal text/article with other legal provisions. It is similar to fraud of the law and differs from tax evasion (where tax avoidance is illegal) in that tax evasion takes the following forms:

- the legal transaction is carried out only to reduce the tax as a result of the own choice;
- the ability of the company by using experts with a high degree of knowledge of the legislation and using it for the implementation of its own benefit, to reduce taxes and duties;
- although it is not allowed, it is nevertheless possible due to the vagueness of the law.

The study of tax optimization in the business management of cross-border industrial organizations is a complex field and consists of:

- the use by specialists of methods and techniques for analysing the tax systems of countries where economic activities are to be carried out, identifying loopholes and inadequacies in tax and criminal legislation, which can be used to minimise tax liabilities, transferring profits to low-tax countries without coming into conflict with the tax authorities of the country where the economic activity is to be carried out;
- a lengthy process based on early identification of economic activities before they are registered for tax purposes in a country and before tax returns are filed for taxation and profits are repatriated to the country of residence or to low-tax countries.

The management of transnational organisations must identify with specialists the transactions subject to tax optimisation that result in interaction with the tax authorities of the countries where they operate and may have negative consequences for the company's business. The objective of any manager in increasing the financial profitability of the company is to organise cross-border activity, including the use of tax optimisation as a legal method of paying tax liabilities. The concept of tax optimisation involves a set of methods and ways of reducing the tax burden of a company resident in a state, which does not declare the profits made in the state where it earns them, but in the state of residence, sometimes with its "complicity".

The main objective of tax optimisation is to increase the value of the company and is based on planning and quality of management organisation. The manager being the one who looks for strategies to reduce its tax burden to generate tax benefits according to tax returns or shareholders' wealth [Abdul Wahab & Holland, 2012]. The impact of tax optimization on firm value has been analyzed by Chadefaux and Rossignol (2006) who found that tax optimization was one of the essential factors to increase firm value either by minimizing tax burdens or by disclosure. Abdul Wahab and Holland (2012) demonstrated the moderating negative influence of manager, of the CEO on the levels of tax optimization.

The theme of the paper is bold and initiates the first approaches to such an important issue as profit externalisation - as a direct consequence of aggressive tax optimisation.

In conclusion, the field of study covered by this paper needs to be further explored in the future, as so far there has been no research and analysis in Romania on the tax aspects of the business models implemented (with specialised advice) by foreign firms with cross-border activities, intra-group transactions between related persons and the ways of outsourcing profits as a result of cross-border arrangements. In European law, tax optimisation is "*the technique*

[5]R. Guesnerie, A Contribution to the Pure Theory of Taxation, Cambridge University Press, on Google books, p. 25

[6]S. Bodu: Tax evasion instructions (I) Romanian Journal of Business Law no. 8/ 2016 - pag. 93
I. M. Costea, Delimitations between tax and criminal wrongdoing, Științe Juridice 2017, pp. 228-258

whereby the taxpayer makes a choice between solutions offered by the tax law in the sense most favourable to its own interests."[7]

The taxpayer makes use of legislative omissions in the tax system, in order to be able to exclude taxation or to generate less onerous taxation. The specific condition involves the use of the regulatory framework, in the sense of not being taken into account by the legislator or in the case of inconsistency/non-consistency with legal provisions of other laws.

Manipulating the price of successive transactions between controlled enterprises[8] intra-group involves either decreasing or increasing the price of products and services, depending on the needs, the facilities granted and the tax registration, and the business model chosen by each cross-border industrial organisation.

The way trade flows in the industrial, manufacturing, consumer goods and retail sectors directly influence the business operating model in the case of aggressive tax optimisation, with transfer pricing providing substantial financial liquidity for the group of affiliated entities when not at market price. However, there are also intra-group transactions - transfer pricing in the case of the business model and incorporation of finished products into other final products.

Current developments in the choice of business models by multinationals now in many cases embody forms of aggressive tax planning based on market prices different from those between independent entities and allowing the transfer of ownership of assets between affiliated entities depending on the economic and fiscal objective chosen by the multinational.

The practice of transfer prices different from those between independent entities and their manipulation according to one's own choice does not, in most cases, meet the constituent elements of the offence of tax evasion, if the aim is not clearly to obtain a tax advantage, but only to pursue an economic purpose - without the aim of avoiding the payment of taxes. In this respect, following a tax inspection, the control bodies analyse the entire tax situation and the transfer prices used between related entities.

If the tax advantage obtained cannot be demonstrated, nor can it be demonstrated beyond doubt that the purpose of the entity was to obtain this tax advantage (non-payment of tax), the tax authority can only reconsider or review the transactions that were carried out by manipulating the price - in order to determine the tax, but will not refer the matter to the criminal investigation body, as the components of the offence of tax evasion are not met.

In conclusion, if the entity has obtained an economic advantage in intra-group transactions without affecting the taxes owed, the tax optimisation is legal. If, however, in addition to the economic advantage, it also *sought to* obtain a tax advantage by using cross-border arrangements and successive intra-group transactions to avoid tax - the tax optimisation - can be classified as aggressive tax optimisation.

Tax optimisation is practised by most companies and is legal when the bona fide taxpayer carries out honest transactions in obtaining finished goods/services without ostentatiously following and avoiding tax obligations where the economic activity is carried out.

Aggressive tax optimisation is illegal and involves the fiscal risk of reconsideration by tax authorities of economic transactions/activities without economic substance. It should be noted that this requires *advance planning and the choice of the appropriate business model*. To eliminate the risk of reconsideration of transactions and activities, entities can use the instruments agreed with the tax authorities for tax planning (APA, SFIA).

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[7] M Sieraczek - Abitan, Termes de droit fiscal, Gualino Publisher, Paris 2007, p. 79

[8] I. M. Costea, Delimitations between tax and criminal wrongdoing, in Annals of Alexandru Ioan Cuza University, Legal Sciences Series, Tom LXIII, Series Nine, 2017 (I), p. 229-258. S. Bodu, C. Bodu, Tax evasion offences, in Romanian Journal of Business Law no. 8/2016, p. 93

The tax optimisation practised by multinationals in their activities in Romania involves the use of legislative loopholes as a way of avoiding taxes and duties due and in particular of outsourcing profits.

Legal tax optimisation within honest limits is applicable if no tax advantage is sought at all costs. Aggressive tax optimisation is aimed at obtaining tax advantages (tax reduction or elimination) and involves tax planning of the business from the moment of tax registration with the tax authorities, using successive intra-group transactions between affiliated entities that are not carried out at market prices (as between independent entities). These entities use transfer pricing techniques and methods to obtain tax advantages, the transfer pricing file precisely because of the control and dependency relationships, intra-group firms and the practice of successive transactions, which are difficult to verify by the tax authorities.

In Romania, the value of intra-group transactions is not known, nor is their impact in determining tax liabilities.

The research objectives take into account the OECD and EU initiative to reform the international corporate tax framework on the two components:

- Pillar I - partial reallocation of profit taxing rights based on a formula to countries where the multinational group has customers or users (not only in the digital sector)
- Pillar II - minimum effective taxation of multinational profits - which will limit the transfer of profits to low-tax areas and allow each country to decide on the features of its own tax systems.

In this context, these changes may influence the tax system in Romania and bring more revenue to the budget from corporate tax through fair payment by companies. Thus the use of a formula-based form of profit allocation in Pillar I and II is likely to automatically lead to the elimination of complex transfer pricing rules in the EU which are difficult to enforce and equally difficult to prove.

In Romania, the transfer pricing file used for the analysis of transactions between affiliated entities has become a formal, inoperative tool that does not provide consistent levers for reconsideration/review of transactions between affiliates, being usually prepared by consultants to present the business model and not to compare transactions made with the market price used by non-controlled entities.

In order to prepare for the transition to the new tax system of the "*arm's length*", it is necessary to know and deepen the cross-border arrangements used by multinationals that allow not only the outsourcing of profits but also the outsourcing of turnover - i.e. of undeclared income made in Romania.

Outsourcing of business is one of the most aggressive practices used by multinationals with the help of tax consultants and has long been the way multinationals have optimised their tax activities. In this paper, representative business models are analysed and the methods and techniques of aggressive tax planning are practically identified, whereby Romania is deprived of the tools to benefit from optimal collection, as recently conceived and addressed by the OECD and the EU.

Summary of the contents of the chapters of the PhD thesis

The paper can be used by company management in managing cross-border business, but also by specialists in the field. The approach and the explanation techniques allow people without experience in tax mysteries to understand the phenomenon of profit outsourcing.

The paper includes a comprehensive research on the subject of aggressive tax optimization and legal optimization, their purpose and consequences in the business management of cross-border industrial organizations, theoretical and practical aspects are addressed and the concerns of specialists in the field (tax authorities, multinational companies and legal and tax

consultancy companies), the legislation in the field and the control over the phenomenon of profit outsourcing, in order to effectively manage the economic financial and tax risks involved, are investigated. Although consistent scientific work has been identified in this area.

The paper looks in particular at risk avoidance techniques by companies and assesses the risks of reconsideration of activities/transactions following tax inspections.

The paper opens the perspectives of a complex analysis of the activity of multinationals in Romania, taking as a starting point the OECD Reports and the EU European Directives that emphasize the elimination of harmful tax regimes (offshore) and the taxation of profits in the jurisdictions where they are carried out, being structured in six (5) chapters, as follows:

Introduction - Provides an introduction to the subject of tax optimization, identifies the research objectives, establishes the scientific originality of the dissertation and its uniqueness.

Chapter I - ***Current status of research in the field of the PhD thesis*** **-** Current status of research in the field of the topic under investigation mentioning the main areas of study on tax policy, tax optimization, tax arrangements, aggressive tax optimization schemes.

Chapter II - ***Preliminary conclusions. Limiting the scope. Theoretical and practical objectives*** **-** Defines the theoretical and practical objectives relating to tax optimisation, limiting the scope of analysis.

Chapter III - ***Developments and Theoretical Contributions on the Study of Tax Optimization in the Business Administration of Cross-Border Industrial Organizations*** **-** Presents developments and theoretical contributions on the study of standardized and specialized tax optimization of groups of cross-border industrial organizations and its influence on tax competition and business environment. It also provides details on the definition of transnational industrial organisations: concept, classification, forms of tax registration, and the tax obligations of multinationals (tax vector).

It defines the concepts of tax residence for foreign entities and the possibilities of carrying out transactions in Romania through tax registration and the granting of a tax identification code (CIF) by the competent body.

It analyses and identifies the declaration to the tax authorities based on the unique tax registration code (CUI), similarities/differences and especially legislative confusions that allow the use of the tax number (CIF) in aggressive tax optimisation schemes, the interposition in intra-group transactions of the parent entity or other entities in the group by registering and assigning the CIF. It also identifies the forms of tax registration and declaration with the competent tax authority (fixed establishment, permanent establishment, tax representative, representative office, registered for VAT purposes: directly, by assigning the VAT identification number and those by assigning the VAT identification number (branch, limited liability company, etc.) and the differences and similarities between them.

It also defines intra-group transactions between related persons, transfer pricing, control and inspection of the transfer pricing file, avoidance of double taxation. It analyses the amendments made by the Multilateral Convention (MLI) to the double taxation treaties concluded by Romania with other states (91). It identifies and analyses the double taxation avoidance instruments used that constitute legal optimisation, concluded in advance with the competent tax authority: the advance pricing agreement and the advance individual tax solution. The paper examines the possibility for the taxpayer to apply the mutual agreement procedure between jurisdictions.

To understand the complex themes the author has proposed classifications and schemes which are analysed in extenso in each chapter.

Chapter IV - ***Theoretical contributions on: Tax fraud. Tax Avoidance/Optimization versus Evasion/Abuse of Law/Transaction/Activity*** -

It analyses and defines, both theoretically and practically, the notions of fraud: optimisation, tax evasion, abuse of rights and identifies the tax control bodies involved in the

analysis of these ways of avoiding the payment of taxes. For each tax avoidance method, the possibility of reconsidering the transactions and the applicable penalties is analysed. It also analyses the possibility of exchanging information between tax administrations - a tool for combating the erosion of the tax base as a result of cross-border arrangements that obtain tax advantages - and identifies the four minimum actions that Romania (tax) must take in order to become a member of the OECD. The concept, notions, hallmarks as implemented by the European Directive 822/2018 - DAC 6 and in the Romanian legislation are analyzed.

Chapter V - ***Developments and Practical Contributions by Thesis (Case Studies)*** - Developments and Practical Contributions by Thesis (Case Studies) identifies in the author's own conceptual manner the schemes implemented between affiliated entities as an effect of aggressive tax planning, identifies practically and theoretically the legislative loopholes used by foreign entities to practice aggressive tax optimization and the ways in which they can outsource profits using the forms of tax registration as implemented in tax law.

It identifies the methods by which profits are outsourced, starting with the method of tax registration, the splitting of the activity, the use of specialised persons, the legislative confusions (loopholes or omissions) related to fixed establishment, permanent establishment, branch, and at the same time taking advantage of the tax administrative capacity of the countries (including Romania) lacking in flexibility and numerically undervalued. At the same time, it analyses and identifies the methods of reconsideration of transactions/economic activities between affiliated entities as a tool to combat the externalisation of profits made in Romania by automatically registering the structures of the non-resident foreign entity (permanent establishment and fixed establishment) through which the economic activity is carried out. It interprets in its own way (contrary to the opinion of some consultants specialising in aggressive tax optimisation) the consequences of the clause of CJEU 333/20 Berlin Chemie and its impact. From a theoretical point of view, the tax optimisation through the use of the CIF for VAT and the interposition of a group entity is analysed. Chapter V presents a number of *15 aggressive tax optimisation schemes - own contribution author work and as many possible motivations in reconsidering intra-group transactions and the activity carried out in Romania by some multinationals.*

In this chapter, a model of bilateral APA, multilateral APA as well as a risk analysis - in the framework of the analysis of the legal optimisation instruments used and implemented with the prior agreement of the competent tax authority - is also presented.

Thesis conclusions- ***Personal contributions (theoretical and practical). Future developments in the research area-*** It is retained for conclusions, personal contributions (theoretical and practical) regarding multinationals, and future developments.

This chapter contains the author's proposals for the research conducted and analysed in the doctoral thesis and covers:

- tax reform to be applied in the area of non-resident legal persons carrying out economic activities;
- legislative changes that should lead to the elimination of loopholes and legislative omissions used by cross-border industrial organisations to avoid paying taxes;
- changes to tax control procedures for determining tax liabilities ex officio;
- ways to strengthen the administrative capacity of the inspection institutions and to involve inspection teams;
- identification and study of the aggressive tax optimisation schemes and identify legislative gaps/"*legal"* inconsistencies;
- exchange of information and practical use of information covered by DAC 6.

Developments and practical contributions of the thesis (case studies)

The description, the deepening of the concepts presented are analysed within the work, a large part of the work being attributed to tax optimisation schemes by presenting representative case studies for certain fields of economic activity - standardised models involving methods and techniques adopted according to the activity carried out by each entity according to the declared NACE code.

Each scheme implemented in cross-border arrangements - aggressive tax optimization between affiliated entities - the author's own contributions are presented in an analysis and concept that allows approaches by entities, specialists and tax authorities alike.

Each implemented scheme quantifies the risks of reconsideration of transactions/business and influence on the management of cross-border industrial organisations through the choice of implemented business mode.

The business models implemented by multinationals based on cross-border arrangements with the aim of obtaining tax advantages are researched by business area and included in the schemes under analysis and research:

- Classic scheme without profit outsourcing - legal tax optimisation
- Profit outsourcing derivative scheme
- Ex officio tax registration of foreign legal entities - requalification of activity/transactions in Romania
- Transactions of goods/services activity carried out in Romania by a foreign legal entity established in Romania (for VAT and corporate income tax purposes) - fixed/permanent establishment - legal tax optimization - use of Romanian CIF or CUI
- Legislative gaps with regard to branch activity
- Profit outsourcing scheme for electricity/gas trading - activity carried out entirely in Romania
- Simple lohn scheme - intra-group transactions
- Classic tax optimisation scheme - profit outsourcing
- Optimization scheme used by foreign companies that also own subsidiaries (factories) in Romania (lohn)
- Lohn tax optimisation scheme - using direct VAT registration code (CIF)
- Outsourcing profit scheme using Romanian CIF - transactions between foreign legal entities for goods located in Romania
- Scheme - Business model - mould route - tax optimisation - mould provision and delivery of goods (made to order) owner directly to third parties
- Scheme relating to the activity of a non-resident (LLC-Netherlands) through a bank account in Romania - undeclared activity
- - Aggressive tax optimisation scheme: with profit outsourcing and VAT refund (for moulds, equipment, premises, etc.)
- - Tax optimisation scheme profit outsourcing - business model machine rental (e.g. Luxembourg) intra-group transactions
- - Aggressive tax optimisation - branch operational structure - intra-group energy transactions
- - Optimisation schemes I and II
- - Intra-group profit outsourcing scheme for economic activity carried out in Romania by the activity splitting method

It should be emphasized that the research used the *adversarial analysis method* in addition to aggressive tax optimization implemented through business models agreed by foreign entities, for

each business model the risks and possible reasons for reconsideration of transactions/restructuring of the activity following tax inspections by the competent bodies with consequences on the establishment of additional tax liabilities are identified.

The empirical study is based on a representative sample of sectors of activity (manufacturing, trade, services, electricity, etc.) and a representative sample of schemes and business models implemented. The study starts from business planning, business model analysis, tax registration, legislative gaps, approved specialists/consultants, risks taken and continues with the risks of business being put back to the previous situation following disputes with the tax authorities.

- **Author's practical considerations on the thesis topic**

The development and implementation of legal tax optimisation schemes is based on the taxpayer's right to choose its business model according to its activity, its own interests and the essential elements leading to the efficiency and achievement of the assumed objectives, as well as the choice of tax regime and registration with the competent tax body.

The aim of making profits by avoiding tax payments by large companies operating across borders unfortunately does not take into account the need to ensure fair competition in the markets for goods and services, often resulting in unfair competition.

The correct payment of taxes and duties, as a rule, where the economic activity is carried out and where the profit is made, can be based on transparent, predictable legislation that allows business to develop in a balanced competitive environment and a fair partner with an efficient administrative capacity in the competent state tax body (where the profit is made and where the taxes and duties are due).

In order to achieve a "*risk-free"* optimisation scheme, it is necessary for the tax consultant/expert (defined as promoter/intermediary -DAC 6) to thoroughly understand its client's business, its mechanisms and limitations in order to find the routes offered by local and international legislation that will lead to a reduction of the financial impact that taxes have on the business model practised. Thus, tax optimisation requires the consultant, first of all, to carry out an operational analysis of the business and transactions with the support of the client in order to prevent, as far as possible, arbitrary interpretations by tax inspectors of the actions leading to a reduction of the tax impact of the transactions that the companies carry out.

Some large/multinational companies fiscally optimise cross-border activity not only in Romania under the pretext that the industrial activity of production and marketing of goods and services is complex, and that several components of the final good are needed to obtain it, which are made in several countries (with the possibility of reducing production costs by using cheap labour from those countries).

Tax optimisation is done by:

- splitting the activity of both production and marketing along the whole chain up to the final consumer;
- successive intra-group transactions;
- charging prices different from domestic market prices and manipulating these prices (mark-up/mark-down) according to optimisation needs and the scheme implemented;
- concluding formal contracts (as presented in the paper);
- using human and material resources of local subsidiaries which it controls without the existence and declaration of a fixed/permanent establishment declared to the tax authorities precisely on the grounds of "*lack of material and human resources*" with the consequence of not paying both VAT and corporation tax and the implementation of a scheme by interposing group entities without declaring the structure (fixed or permanent establishment) to the tax authorities.

The recent EU legislative regulations (implementing/transposing the DAC Directive 6 - also implemented in Romania) are tools for knowledge and analysis of the optimization schemes practiced by multinationals in their business model, which should become transparent through the exchange of information between the tax authorities of all the countries where the multinational carries out activities and successive intra-group commercial transactions, with the aim of obtaining advantages (i.e. reducing taxes and duties due).

"The natural consequence of the approach to the analysis of optimization schemes is in close correlation with the methods of reconsidering transactions and activities based on the reasons found during tax inspections. The conduct of tax inspections must be based on transparent procedures for reclassification of the activity, ex officio registration, allocation of income and expenses for the activity performed, provision of measures for the preparation of invoices by using the Romanian identification code for the delivery of goods / services to the fixed / permanent establishment, if applicable. "[9]

- **Legislative loopholes regarding the method of tax registration and declaration of tax obligations in Romania for non-resident entities**

In the sense of what has been analysed and researched in the paper, it appears that it is necessary to complete the legislation and the tax identification and control procedures in order to eliminate in practice the existing loopholes, to eliminate the administrative bottlenecks in establishing the tax status of non-resident taxpayers:

- clarification in the tax legislation of certain aspects from a VAT perspective with regard to the activity carried out by non-resident companies registered in Romania directly for VAT purposes only, and the use *in extenso* of the tax registration code (CIF) if other local transactions are carried out - involving in fact economic activity with profit (tax advantages) and not only for VAT purposes;

- modification/completion of the VAT legislation in terms of the identification elements required by the legislation for the qualification of a fixed/permanent establishment (in Romania), so that the tax inspection authorities no longer encounter difficulties in establishing whether or not a fixed/permanent establishment of non-resident legal persons exists (in relation to the factual situation established), and taxpayers may find themselves with significant influences on their business model in the event of reconsideration of transactions/activities carried out in Romania.

Following the research carried out, in the case of reconsideration of transactions/economic activity (from the findings of the tax inspection bodies following the control activity), a business model was identified at the taxpayers' level implemented by which taxes and duties in Romania are reduced, a scheme put into practice due to the lack of procedures for reconsideration of transactions and the legislative and procedural vagueness of direct tax registration for VAT purposes versus fixed establishment/permanent establishment tax registration.

- **Reconsideration of cross-border transactions (without economic substance) between affiliated entities in Romania - a tool to combat outsourcing of untaxed profits by cross-border industrial organisations**

[9] M. Manea - "*Aggressive tax optimization - reason for reconsidering/ reframing the activity of cross-border firms in Romania*", article published in the Punctul Critic Magazine no. 1-2(39-40)/2022, Fundatia Culturala Publisher "Ideea Europeană", page 136.

Since in the case of multinationals it has been proven in practice that criminal liability cannot be incurred for the use of tax optimisation schemes that reduce/eliminate corporate income tax or VAT, there are legislative *"remedies"* applicable/relevant to the case in question, sufficient to allow in intra-group transactions (affiliated persons of the same group) the recovery of tax liabilities as for *"independent"* persons, at market price.

The influence of the reconsideration of transactions between related persons on the non-resident taxpayer's income tax/VAT liability can be substantial/significant and in some cases requires a change in the business model in order to comply with the legal provisions applicable for economic activities in Romania (e.g.: local subsidiary of non-resident company declares minimum profit tax and VAT for intra-community supplies does not apply) for transactions between parent company and local subsidiary - goods being *"collected"* from the factory gate and delivered intra-community by the parent (by registering for VAT) and using CIF - Romanian VAT, profit being outsourced. Therefore, we consider that there is only a reconsideration of the taxes from a tax point of view and there is no need to refer the case to the criminal investigation authorities if the company has declared the income and tax in the state of residence and the related VAT.

In the US economic substance is a doctrine defined according to which "*the transaction must have both a substantial purpose other than to reduce the tax liability and an economic effect other than the tax effect to be considered valid*". Underlying this doctrine is whether the strategy used to reduce the tax liability is considered "abusive" and does not reflect the economic reality of the business arrangement.

In EU and Romanian law, transactions without substance are defined as those transactions carried out for the purpose of obtaining tax advantages. Therefore, in the light of CAD 6, the tax advantage obtained between economic transactions between related entities is likely to lack economic substance - the business model being planned only to minimise corporate income tax and even VAT due - if the non-resident entity cannot justify the contrary (i.e. does not justify the economic substance of the transactions).

The European Commission is preparing amendments to Directive 2011/16/EU (ATAD III) in order to identify shell companies that do not actually carry out economic activity but intervene in transactions in order to minimise the tax base through cross-border arrangements. Thus, from 01.01.2024 tax authorities can identify these entities and reconsider non-economic transactions implemented with the aim of obtaining tax advantages (ATAD I and ATAD II - establish the general principles of economic over legal).

- **Ex officio tax registration and tax reassessment of intra-group transactions/activities for economic activity carried out in Romania by foreign entities-**

The following issues were examined in this paper:

A. Reconsideration of intra-group activity/transactions (affiliated persons) and activity carried out in Romania following tax inspections can be done by the control bodies of ANAF by:

1. *Registration of the permanent establishment ex officio (for corporation tax)*
2. *Registration of the fixed establishment ex officio (for VAT)*

The ex officio registration of a foreign entity shall be carried out, if the tax inspection authorities find that there are grounds for such registration, by means of a reasoned and substantiated report on the basis of which the ex officio registration decision is based:

The central tax authority may register, ex officio or at the request of another authority administering tax claims, a taxable person/foreign legal entity that has not fulfilled its obligation to register for tax purposes in accordance with the law. The procedure for registration ex officio or at the request of an authority administering tax claims is approved by

order of the President of ANAF (Order of the President of ANAF no. 2921 of 12 October 2016 approving the Procedure for tax registration, ex officio or at the request of another authority administering tax claims, of a subject of tax law who has not fulfilled the obligation of tax registration, according to the law).

The non-registration by the inspection bodies of the fixed establishment-VAT was "sanctioned" by the CJEU in Case C-333/2020 Berlin Chemie, which concluded that the existence of a "fixed establishment structure" capable of receiving services to a non-resident is absolutely necessary for the collection of Romanian VAT on these supplies.

- **Ex officio tax registration of the structure - fixed and permanent establishment - analysis of intra-group transactions and ex officio tax registration of economic activity**

Fair taxation and a relationship based on morality between the state and multinationals in terms of tax compliance can ensure a competitive market for Romania.

By the *Multilateral Convention on the implementation of tax treaty measures to prevent the erosion of the tax base and the transfer of profits* (MLI) ratified by Romania in January 2022, the Romanian State notified, however, the use of anti-fragmentation rules, in the sense of full taxation, as a whole, of the activity carried out in Romania through permanent establishments and other forms of registration (through which outsourcing was possible until now).

This, together with the implementation and enforcement of DAC 6 (whereby taxpayers and intermediaries who practice aggressive tax planning schemes are obliged to declare information on cross-border arrangements to the tax authorities), gives the Romanian state and the tax authorities of ANAF (tax inspection, DGAF) lethal tools and weapons to stop/block the outsourcing of profits and massive VAT refunds for activities carried out in Romania and the transfer of natural, financial, material and human resources to other countries at low prices.

The applicable tax registration legislation has been interpreted and implemented by foreign companies/entities operating in Romania by using legislative loopholes and the legislator's hesitation in regulating intra-group transactions. Artificial, non-economic, successive/circular, activity fragmenting transactions may take place between affiliated persons, leading to an aggressively optimised payment of liabilities, a tax advantage resulting in poor collection of both corporate income tax and VAT (see VAT GAP).

Although the transfer pricing regulations do not apply to VAT (a concept supported by consultants specialized in aggressive tax optimization), the interposition of the parent company - a foreign legal entity - registered only for VAT purposes in Romania - *and the declaration of the transactions carried out between the LLC and the parent company (Romanian VAT VAT number) and not directly with independent companies - "third parties" - is justified only by the existence of the scheme of aggressive tax avoidance/optimization and the carrying out of transactions without an undeclared economic purpose. As the company is registered for VAT and as a permanent establishment by carrying out economic activity, it is also a fixed establishment by default.*

- **Legislative gaps on fixed establishment - impact of the CJEU Berlin Chemie C 333/2020[10] -**

The paper analyses the seminificant impact on business models and business administration of cross-border industrial organisations of this case and the need for the existence (registration) of the structure through which the business is conducted.

[10] M. Mariana - "*Aggressive tax optimization - reason for reconsidering/refocusing the activity of cross-border firms in Romania*" article published in Revista Drept

- **Legal tax optimisation - case studies**

The use of legal optimisation tools, as presented above, can be the main element in eliminating the risks of intra-group transactions and reconsidering the economic activity of cross-border industrial organisations and adopting the business model appropriate to the activity carried out by each entity. Regulations on these instruments (APA, SFIA) need to be promoted as a means of transparent cooperation between tax authorities and cross-border entities.

The practical examples presented on the analysis of legal tax optimisation are conclusive in the research of business models and the prior agreement concluded with the Tax Authority eliminates possible risks associated with transfer pricing and which could have significant negative consequences on the tax obligations established following tax inspections. Transfer pricing risk analyses are carried out in advance (in the case of APAs and SFIAs) so that the risk of tax and duty repayments is eliminated.

The popularization among companies, not only foreign companies operating in Romania, but also Romanian companies operating in other countries, of legal tax optimization tools through "negotiation" with the competent authorities ensures tax transparency in the approach to the subject between the parties to the Agreement and a stable business environment.

Conclusions. Personal contributions (theoretical and practical). Future developments in the research area

In the paper "Tax optimization in business management of cross-border industrial organizations" we aimed to study cross-border arrangements aimed at obtaining tax advantages used by multinationals in cross-border business management, their impact and risks, the reasons for reconsidering the activity/business. What is tax optimisation and when is it aggressive? What is the impact of implementing business models and what are the reasons for reconsideration?

The reasons why the subject is of utmost importance and topicality in the context of the internationalization of business, the need and taxation in the place where the company's activity is carried out by respecting the principle of arm's length and the focus of tax inspections on the ways and techniques of externalization of profits and avoidance of tax liabilities.

Following research and in-depth study of aggressive tax optimisation schemes - resulting from the tax standardisation/planning practised and implemented by multinationals - through cross-border arrangements aimed at obtaining tax advantages, *lines of action* have emerged which can be used to limit the significant effects of externalisation of profits (which are no longer reinvested), non-taxation of profits and non-collection of VAT on successive intra-group/circular transactions as a consequence of price manipulation (+/-), depending on the optimisation needs agreed by each entity to avoid payment of liabilities.

Legislative shortcomings (inconsistencies or omissions) and the administrative capacity of the competent tax authorities are decisive factors that can influence the collection of taxes and duties owed by cross-border industrial organisations for the activity carried out in Romania both through the exploitation of soil and subsoil resources and of Romania's material and human resources.

Recently, the Fiscal Council has drawn attention *"to tax optimisations and concessions made to interest groups that have taken advantage of the weaknesses of the Romanian state"*

and which have led to a tax regime based on *"exceptions and loopholes for optimisation, which are deeply unfair."* [11]

The need for OECD and EU approaches on these issues also requires in Romania the adoption of minimal and courageous measures to eliminate the existing tax and criminal law loopholes, of working procedures - as effective tools to reverse the aggressive planning of standardization of tax optimization schemes practiced by multinationals.

In this respect, the present research on the phenomenon of tax optimisation has resulted in the need for administrative and fiscal ***reform:***

1. *administrative* as a consequence of the problems identified:
   - administrative incapacity through undersizing of the tax inspection apparatus
   - lack of professional methodological and procedural coordination at central level of the tax inspection apparatus
   - territorially fragmented inspection powers (AFCN and Territorial Administrations) leading to an ineffective response by tax inspection bodies due to the lack of procedures for verifying and re-framing intra-group transactions;
2. *legislative* (gaps, inadequacies, omissions);
3. recruitment of *specialised and appropriately remunerated staff.*

We list the proposals resulting from the research on:

-Eliminate legislative and procedural loopholes that would ensure a stable and transparent business environment for cross-border industrial organisations;

- Proposals by the author of the research - to strengthen the administrative capacity of the competent tax body;

- Proposals on the elimination of VAT fraud:
  - ✓ inclusion of VAT in the proposal for a Directive on combating fraud to the Union's financial interests by means of criminal law;
  - ✓ OLAF to have powers and tools to investigate fraud;
  - ✓ improving the warning system through EUROFISC;
  - ✓ the incurring of joint and several liability for unlawful VAT refunds and proven abuse of rights.

These proposals concern EU legislation that will be able to respond more promptly and effectively to methods of VAT fraud and non-collection by Member States' tax authorities.

Future developments in research

The paper aims to analyse intra-group transactions and the tax consequences of schemes (which are standardised) by which profits are transferred abroad (without being taxed in Romania) and aims to research and understand the techniques and models implemented by multinational companies. Thus, a significant increase in tax revenues is needed in Romania to help support strategically important sectors such as the defence industry, the energy industry, agriculture/agri-food industry, health and education.

According to NBR data, "Very low tax revenues (around 26% of GDP in recent years compared to an EU average of 40%) and pro-cyclical policies that have generated very large structural deficits have led to an EU structural deficit (around 5% at the end of 2019 and over 7% of GDP in 2020), with wage and social spending swallowing more than 80% of tax revenues."

[11] Report of the Romanian Fiscal Council

In conclusion, in the near future it is necessary to reconsider the tax system by eliminating undue privileges and inconsistencies, massively reducing tax evasion that deprives the public budget of important revenues (Convergence Analysis Report "Romania - Euro Area, Monitor" - published on the website of the National Bank of Romania).

In order to *mitigate the effects of outsourcing of profits made in Romania and non-taxation* it is necessary:

- to identify the legislative gaps in the Tax Code and the Tax Procedure Code, of inadequacies, inconsistencies;
- to study the reports submitted to ANAF as a result of the implementation of the European legislation on DAC 6;
- to specialise and co-train people with appropriate skills in the field of tax control in cross-border arrangements;
- to establish an integrated strategy for tax auditing of related entities and reporting of intra-group transactions for digitised transfer pricing risk analysis;
- to identify the legislative factors that can generate and constrain firms to market pricing behaviour and formalise transfer pricing standards aimed at externalising profit;
- to sanction price manipulation behaviour by groups with a dominant position in the competitive market;
- restrictive legislative constraints on specialist staff (experts, tax consultants, accountants, etc.) who market and standardise aggressive tax optimisation schemes.

With a view to the future international rethinking of the methods of taxation of profits and payment of tax in the country where the profit is actually made, the *research carried out and presented in this paper may be the starting point for declaring turnover and economic activity carried out in Romania and not declaring income and profits in other countries.*

Outsourcing of profits is done by outsourcing the reporting of income and declaring it in the state of residence of the foreign entity, as shown in the research conducted and presented in the analysis of aggressive tax optimization schemes. The only public institution that can limit the transfer of profits to other countries is the ANAF.

The non-declaration of turnover in Romania and its externalisation makes the new EU and OECD tax policy approach of applying the arm's length (Pillar I and II) inoperative, the arm being "amputated" in Romania. Thus, Romania cannot benefit from the minimum effective taxation on the profit made if the formula will involve turnover made in one state.

In order to limit the outsourcing of turnover, Romania needs to have stricter control over the techniques and modalities of implementing cross-border arrangements to obtain tax advantages for multinationals.

Experts from the Ministry of Finance and ANAF must develop rules and procedures to close the legislative loopholes that allow profit outsourcing. The instrument, which can be the basis of the study, can be provided from the analysis of the DAC 6 reports to ANAF and should be aimed, in particular, at the additional collection of obligations owed by multinationals, an objective which is obviously contrary to the interests of the business environment but so necessary to the Romanian state.

Future developments in Romania and the EU

In order to implement the new income tax framework for entities in Europe called "BEFIT" (Business in Europe: Framework for Income Taxation) in terms of common rules for establishing and determining the tax base (Pillar II), multinational companies will benefit from

common rules for establishing tax liabilities, without having to know and apply the tax systems of 27 countries.

The group will file a single tax return. As well as providing a simplified way of sharing the tax liability fairly between countries, it would also reduce compliance costs for companies and the administrative burden on tax authorities.

In this regard, *it is necessary to study the mechanisms for declaring the turnover of multinational companies in Romania*, in order to establish the full tax base by various methods, which would allow in this sense the allocation of a tax base (turnover) for the application of corporate income tax.

It should be noted that the tax will be set by each state and will not be the same in all states.

Of note for the implementation of the new EU tax guideline is the fact that the current complex transfer pricing profit allocation rules will be eliminated and the issue of shell companies will be addressed - in the sense of neutralising the misuse in aggressive tax planning, tax avoidance of abusive tax structures without economic substance.

Romania's ratification of the Multilateral Convention eliminates the possibility for multinationals to split their business and not declare their turnover in Romania. But the application of the Convention requires a specific analysis with specialised staff.

In Romania, so far, profit has been outsourced through the use of abusive structures without economic substance. The application of Pillar I would make it possible, by establishing rules at international level, to allocate part of this externalised profit to Romania on the basis of an agreed formula.

In conclusion, the paper presented is the starting point for addressing, in the coming period, the mechanisms for intensifying the collection of taxes and duties due for economic activities carried out in Romania by foreign entities and the implementation of EU and OECD legislation on the taxation of profits in the state where they are made (as a result of the exploitation of land, subsoil, material, human resources).

Regarding future research developments in the field under review, they should focus on eliminating and removing the limitations of the present research by:

- to outline and establish a strategy for the analysis and study of cross-border arrangements implemented in order to obtain tax advantages (through agreed business models/schemes);
- analysis and identification of legislative gaps regarding the ways and techniques of outsourcing profiling carried out in Romania;
- coercive measures to comply with tax regulations and contractual discipline;
- The study of price manipulation and misbehaviour of cross-border industrial organisations.

In conclusion, we are convinced that the paper is a legitimate approach for the future study of this phenomenon of aggressive/legal tax optimization, becoming attractive and challenging for industrial, economic and tax specialists and for the business environment in the field of industrial production, trade, provision of services.