HARMONIZING DIRECTIONS IN THE FIELD OF DIRECT TAXATION

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The belonging to the unique European market also involves, without discussion, harmonizing practices in several fields of general interest, among which it is the fiscal one. Generally, taxation harmonizing is induced by the necessity that national tax systems wouldn't harm the fourth liberties subscribed in the Treaty regarding the constitution of European Community: free circulation of goods; free circulation of services, of people and of stocks.

Among the specialists, when it comes to harmonizing in the tax field, it is more often talked about indirect taxes. But there are some things to be said also in the field of direct taxes. If indirect taxation contorts many times the free circulation of goods and free practice of services, requiring a high grade of harmonization, it doesn't happen the same with direct taxation. To the highest degree it is not necessary to harmonize direct taxing, this one being applicable strictly inside of each state member of the European Union. Consequently, the main majority of the regulations regarding direct taxing is to be considered appropriate entirely by each state, since they are an attribute of their sovereignity.
Community aquis in the field of direct taxation aims in the main the tax on profit (for companies) and the tax on stock, but for the tax on the incomes of natural persons.[1]

[1]Tulai C, Şerbu S – Compared taxation and tax harmonizing, Publishing House Casa Cărții de Ştiință, Cluj-Napoca, 2005, pg. 173.

What was accomplished in the field of harmonizing direct taxation

At the level of European Union, in what concerns harmonizing of direct taxes, there have been aimed the followings: creating a common system of taxing applicable to the suppliers, scissions, cessions of actives and stocks shares among the companies which belong to different states members of EU; creating a common system of taxing of the profits between branches and mother-company; creating a common system of taxing applicable to the payment of interests and equities among the affiliated persons.

The first directive in the field of direct taxation was „Directive no. 90/434/CEE regarding a common system of taxing applicable to the merges, scissions, cession of actives and changes of shares among companies belonging to different states members of the EU”, known under the name of „Merges Directive”

In the introduction of the Directive it is justified the necessity of adopting from the which to ensure a fair assessment of the operations of merging, scission, cession of actives and share transfer, either these operations occur within a single member state, either within two member states.
According to the mentioned provision, a merge or a scission won't determine the taxing on the share of stock calculated as the difference between the real value of

the elements of active and passive and their tax value[2].

In Romania, the provisions regarding merges have been implemented by the Law no. 571/2003 with the subsequent ammendments and additions, art. 27 „Reorganizations, dissolutions and other transfers of actives and participating titles."

The second directive in the field of direct taxation was „Directive 90/435/CEE regarding a common system of taxing applicable to the mother-companies[3] and branches". Known under the name of „Directive regarding branches", it suffered only an amendment, in 2003. The directive is applied in each member state in the case of assignment of the profits received by the companies from that state, which came from their branches from other member states, as well as of the assignment of the profits by the companies from that state to companies from other member states, to which they belong as a branch.

This directive does not locks the application of the internal dispositions or of those which are based on necessary agreements in order to prevent fraud or abuse, the purpose being to eliminate completely the double assessment in the case of distributing the profits from a branch to the mother-company. So, when a branch distributes profits to the mother-company, other than on the occasion of its dissolution, the state where they found the company either does not assess these profits, either it assesses them authorizing at the same time the mother-company to deduce from the owed tax that share of the tax on company which is paid by the branch. Also, the profits assigned by the branches to the mother-company are free from taxes with deduction to the source[4], and the state to which the mother company-belongs cannot levy taxes with deduction to the source for the profits received from the branch.

On the 3rd of June there was adopted a new directive in the field of direct taxation, respectively Directive 2003/49/CE regarding a common system of taxation applicable to payment of interests and equities among the affiliated companies belonging to different member states. The purpose is that to ensure that the interests and tributes paid among affiliated companies are taxed only once in a member state, the basic ideea being to eliminate the taxing on source the payments of interests and tributes made among the affiliated companies.

Consequently, the payments of interests and tributes must be exempted by the taxes imposed in the source state[5] on the condition that their benefficiary would be a company in another member state or a permanent headquarter of a company located in another member state. These provisions are applied only if the payments occur between two affiliated companies. The member states are also allowed not to apply the provisions of this directive if the condition regarding the status of the affiliated company is not maintained for an uninterrupted period of at least two years.

In order to receive the exemption the source state can pretend to prove the accomplishment of the conditions regarding the status of the affiliated company through a certificate. In at most three months since the presentment of the certificate, the source state must decide regarding to giving the exemption which can refer to a period of at least one year, but not more than three years on the grounds of the same certificate. In case the company who is paying the interest or the royalties has kept the tax of which it

[2] By tax value it is understand the value on which basis would be calculated the profit or the loss in order to establish the tax on profit, of the profits or stock shares of the cedent company, if these actives and passives would have been sold in the moment of merge or scission, but independently of this.

[3] The status of „mother company" it is attributed to any company of a member state which has minimum 20% from the stock of a company from another member state.

[4] It is about other taxes than the tax on profit; respectively of taxes with retention to the source, as are the taxes on equities.

[5] The source state represents the state where is the company who makes the payments.

was exempted to the source, it can require its reimbursement within a period of maximum 2 years since the payment of the interest or of the reimbursement. The source state is obliged to reimburse this tax within a term of one year since the date when it was filed. If the state doesn't reimburse this tax within a term of one year, the company who paid has the right to calculate and ask for the interest for the amount they didn't received, the interest calculated at the level of the interest rate applicable in similar situations according to the national legislation.

Romania is authorized not to apply to the dispozition of article 1 from the Directive 2003/49/CE until 31st of December 2010. During this period of transition, the quota of the payments of interest or royalties to an associate company from another member state or to a permanent headquarter of an associate company from a member state must not exceed 10%.[6]

What is it wished to realise in the field of direct taxation

A recent study realized by KPMG International shows that a big part of the companies from the European Union whish an unique for the calculation of the tax on profit. To this study took part financial managers, directors and managers from the tax field of over 400 companies, including some of the biggest companies from all 27 states members of EU and Switzerland. It is stressed the fact that an important number of specialists in the field of taxes and rates sustain the proposal of the European Comission for a sole calculation formula of the taxinf basis of the profit applied to an European level.

Table no. 1. **- The support of the idea of harmonizing the taxes to a European level, according to industrial sector (percent)**

Economic field	Answer (%)		
	YES	NO	I DON'T KNOW
Services for business	73	25	2
Services for consumers	81	15	4
Financial services	79	12	9
Industrial production	81	12	7
IT	67	25	8
Manufacturing industry	73	15	12
Extractive/utilities	81	10	9
Real estate/transport	76	21	3
Other	77	23	-
	78%	16%	6%

Source*: KPMG International*

The system proposed by the Commission, under the name of Common Consolidated Corporate Tax Base (CCCTB) is to be applied in parallel with calculation methods existent in each member state, the companies being able to choose to adopt the pan-European system or to apply herein after the national rules. The Commission hopes that the new system to be ready until 2010, but the great majority of the participants to the opinion survey see that the date when it is going to be applied is the year 2015.

The companies which are going to use the sole formula valid in Europe will calculate the total of the profits obtained all over the European Union territory and then they will reallocate to the countries where the companies have economic activity, in order to be taxed with the quota of tax on profit applicable in that

[6] Law 157/24th of May 2005 for ratifying the Treaty among the Kingdom of Belgium, Czech Republic, Kingdom of Denmark, Federal Republic of Germany, Estonian Republic, Helenic Republic, Kingdom of Spain, French Republic, Ireland, Italian Republic, Cyprus Republic, Lethonian Republic, Lithuanian Republic, Grand Dukedom of Luxembourg, Hungarian Republic, Republic of Malta, Kingdom of Lower Countries, Republic of Austria, Polish Republic, Portuguese Republic, Slovenia Republic, Republic of Slovakia, Finland Republic, Kingdom of Sweden, United Kingdom of Great Britain and Northern Irleland (member states of European Union) and Republic of Bulgaria and Romania regarding the adhesion of Republic of Bulgaria and Romania to the European Union, signed by Romania at Luxembourg on the 25th of April 2005, published in: the Official Gazette no. 465 from the 1st of June 2005.

countries. Such an amendment would facilitate the administration of the payment of the tax on profit owed by the companies which operate in EU, because the taxing basis would be calculated using an unique method and not separately as it is calculated in the present for each country.

The idea is supported by the tax professionists in Romania, of which 90% supported the proposal of the European Commission, comparatively with 78% from the total of professionists in EU. The respondents from the Czech Republic, Denmark and Spain were the most enthusiasts, 100% of them supporting the initiative. In Italy 96% were in favour of the proposal, while in Greece, Luxembourg, Poland, Slovenia and Sweden there was recorded a support of 90%. The proposal was supported by 84% of the respondents in Germany and 80% in Austria, Finland, Hungary and Portugal. Among one of the most skeptical countries was Great Britain with a support of only 62% for the Commission's plans, while Ireland and Slovakia 50% of the respondents opposed.

It is good to mention the fact that the proposal of the European Commission does not support the introduction of a sole quota of tax on profit at the level of European Union, but 69% of the respondents said that above a basis of a sole quota of tax on profit would like to have also a sole quota of tax on profit for the entire Europe.

Only in England, Cyprus, Ireland, Poland and Switzerland the majority of the respondents were against of a sole quota of tax on profit. In Denmark the answers pro and against were distributed equally, but in all the other countries there was recorded a strong support of this idea.

It can be drawn the conclusion that still the introduction of a sole quota of tax on profit to the level of European Union would be a controversial and probably would be denied by the wide public from many states members of the European Union. It would also be very difficult to be implemented from political point of view.

A sole quota of tax on profit to the EU level would also have negative implications for many new member states of EU, among which Romania too, which have a more relaxed taxation at the level of trading companies (16%), this thing being precisely the attraction element for the foreign investments. Harmonizing with other states members of the EU would mean an important raise of the taxing quota and possibly coming back to a progressive system, which would generate a strong opposition from the government and of the investors. Consequently, introducing a sole quota of the tax on profit to the EU level, at least in the current conjuncture, cannot be viable.

Still, the proposal of the EU Commission for a sole basis of taxable profit to the level of the whole EU, subsequently giving to the national governments the freedom to establish their own quota of tax on profit, it is pragmatic and reasonable. This thing would simplify the taxation of the profits of the companies which develop activities on EU territory, without affecting the competition or to restrict the freedom of national governments to establish by themselves tax quotas which they consider appropriate.

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