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Fiscal optimisation and planning at the national and EU levels

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1) The tax system at the national and European Union level.

The deffinition of the tax system

The tax system has three main components:

- Tax legislation: regulates and establishes duties and taxes;
- Tax mechanism: techniques and procedures of organizing and leading the activity of determinationt, monitoring and collecting of taxes;
- The tax system: institutions and personnel who act in order to calculate, monitor and collect the taxes, meaninig revenues.

The tax system in ROMANIA

Income tax carried out by natural persons:
Have the status of tax payers and therefore owe income tax:

- individual persons resident - which are imposed at different levels:
a) Romanian resident individual persons, with a residence in Romania, for the revenue obtained from any source both in Romania and abroad;

b)other resident individuals, for the revenue obtained from Romania.
-non-resident individual persons who is self-employed through a permanent establishment in Romania;
-non-resident individual persons who are performing dependent activities in Romania;
-non-resident individual persons who obtain other income.

The categories of income that are subject to tax on income are: income from dependent activities; income from salaries; income from renting or leasing their assets; investment income; income realized from transferal of immovable property of personal property; income from pension, income from agricultural activities; venture of awards and playing games of chance, income from other sources.
Revenue from all sources by natural persons shall be subject to the tax quota of 16% - single tax rate applied to taxable income for each income sources.There are exceptions to the unique rate. Thus the income from transferal of ownership of titlulurilor value shall be taxed at a rate of 1 %; the income from properties transfer.

The tax system in Bulgaria

Personal income tax:
Income tax is a tax paid by individuals who receive income in Bulgaria. Although income is the core of this tax, the law on income tax of individuals does not explicitly define income, instead it puts income in connection with his sources.

Depending on the source of income types are:
 Income from employment;
 Personal business income;
 Income from rents;
 Income from transfer of property rights;
 Income from other sources;
 Donations and legacies are the only sources of income exempt from tax.

Taxable income is considered income from all sources, except for items that are defined as not taxable. The law contains over 30 considered taxable income such as:

- Revenue from the sale of the house;
- Dividends that were distributed in the form of new shares;
- Income from compulsory social insurance;
- Additional income insurance;
- Interest on deposits in commercial banks;
- Bonds, municipal and corporate Bulgarian;
- Scholarships;
- Amounts and prizes of gambling;
- Travel expenses;
- Income from rent or lease of agricultural land;
- Income from raw agricultural materials etc.

Basic taxable income (total tax base) shall be calculated in three steps. First, the tax base shall be calculated separately for each source of income. Secondly, they must be aggregated and thirdly the tax exemptions shall be deducted from the total taxes. For the total tax base is applied a tax rate of 10 %.

They are exempted from paying tax the persons who are in one of these situations:

- The persons with reduced capacity for work(Invalid), may exempt from paying tax up to 7,920 BGN.
- Exemptions of up to 10 % of the total amount of the tax base for personal contributions to supplementary pension schemes, as well as for additional health insurance and life insurance policies.

- Deductions for donations
  - -up to 5% in 14 well-defined cases;
  - up to 15% for donations to the culture;
  - up to 50% for donations to the Children Fund.

The tax system in FRANCE

Income tax:

To determine the subjects resident taxpayers, French tax law employs three alternative criteria:

- Personal criteria: permanent residence in France;
- Professional criteria: the pursuit of a professional activity in France (employed or not), which is not an ancillary activity;
- Economic criterion: Hexagon location in the center of economic interest.

In principle, all residents owe tax for their income (domestic and foreign), while non-residents owe tax only for the benefits of French source.

The tax base consists of nine categories of revenue: benefits, wages, pensions, and life rent; agricultural benefits; industrial and commercial benefits; non-commercial income; income from movable capital nature; land income; remuneration of the administrators of commercial firms; professional earnings; earnings obtained by individuals.

Determining the taxable income shall be carried out at the level of each category of income, in accordance with their own rules.

The tax rate varies between 0% for incomes of less than EUR 4,262 and 48% incomes exceeding 47,932 € .

France granted attention to taxation plus-values in various transactions or in possession of movable assets or real estate. Basically there are two main categories of taxable transactions:

- securities gains carried out by assignment of securities or precious objects;
- real estate gains achieved by disposing of immobile or of certain rights of buildings.

Tax rates are variable:

- income from the disposal of securities exceeding EUR 15,000 shall be taxed with 16, to which they added a obligatory social contribution of 10 %;
- gain from disposals of valuables: precious metals - 8% of the sale price; jewelry, objects of art or collection - 5% for the portion of the sale price exceeding 3050 €;
- revenue real estate nature- the application of general reference of the tax, with certain corrective to obviate imposition progression.

The tax on income from salaries
Tax on income from wages is imposed only to companies resident and permanent establishments of foreign companies, which are not subject to the value added tax (VAT) or if at least 90% of their benefit has been exempted from the VAT in the previous year. The tax base represents the total amount of the remuneration.
Such rates are:

- -4.25 % for the part of individual annual salary up to 6 675 euros;
- -8.5 % for the part of individual annual salary between 6 675 euros and 13 337 euros;
- -13.6 % for the part of individual annual salary which exceeds 13 337 euros.

Apprenticeship Tax
Tax on apprenticeship is placed on the amount of the total wages, at a rate of 0.5 percent. A reduced rate applies in certain French departments. The tax is deductible for corporate income tax.

Tax on improvement (preparation) professional
Training tax applies to employers who have 10 employees or more. These employers must invest 1.5% of the total amount in payroll on training programs.
The rate is reduced by 0.15% for enterprises employing less than 10 employees.
Tax deductible tax reasons in proceedings for the imposition of the company's revenue.

The tax system in Austria

Income tax:
In Austria, the personal income tax collected is shared between the federal government, provinces and local authorities in the same proportion as the profit tax. This tax is payable by Austrian residents for domestic and foreign income that they receive. In contrast, non-residents only owe tax for the benefits of Austrian origin.

The tax base consists of seven distinct categories of income: agricultural income, non-commercial income, industrial and commercial income, wages and salaries, investment income, land revenue and royalties and other income. In principle, the tax base is obtained by summing the corresponding accounting seven categories of income. Are exempt from taxation, for example, war veterans pensions, aid to promote the arts, science or research, family allowances, compensation paid to victims of violent crimes etc.
For the first three categories of income mentioned, the Austrian law has provided for the possibility of deducting 20% of investments in employee training material, 35% of investments in research – development, a share of voluntary contributions to pension funds (approximately 10% of costs up to 1800 € deductible, provided that at least 40% of the capital is invested in shares of Austrian companies), amounts paid to tax consultants, contributions to religious cults (capped at a certain level), the purchase of new shares (within certain limits). It also reduces taxable income and certain extraordinary expenses such as medical expenses, repairs necessary due to the occurrence of a disaster, funeral expenses, expenditure on education of children sent to study abroad.

Tax rates vary between 0% for income below € 3.640, up to 50% on income over € 50.870.

The tax system in LATVIA

Income tax:
Income tax is due in Latvia by Latvian residents, for all domestic and foreign revenues and nonresidents for the incomes obtained in Latvia. The tax residence of a person is determined by a criterion that became classic, namely the fact of living in Latvia at least 183 days during a fiscal year.
While income tax is collected by the central authorities, in the end 71.6% of the amounts collected is distribute local.
The tax base generally includes all categories of income from individuals. Exemptions from tax and deductions for taxpayers are few in number. These include basic personal allowances granted to taxpayers, worth 216 Lats annual.
Latvia applies the single taxation quota in the amount of 25% (effective in 1995), all income greater than 312 Lats annual. Annual revenues that do not meet the threshold are exempt from taxation.

The tax system in POLAND

Income tax:
To determine taxpayers who owe income tax, the same distinction is made between residents and nonresidents. Residents owe tax on all income they produce, while non-residents owe tax only on income from Poland.
Residence criterion is determined by the Polish Civil Code that the existence of primordial interests of individuals in Poland. This criterion must, however, must by examined for each case.
The taxation base consists of nine categories of income: wages, income from performance of professional services, exercise of a business (other than agriculture), income from certain agricultural activities, income relating to property rental, investment income, income from transactions property, other income.

Are considered taxable income the benefits received by the shareholders or members of a partnership venture. If the company does not have legal personality, the associates distributed income is taxed according to the Articles of Association. If the company is a legal entity, any distributions of benefits in the form of dividends are taxed.
With effect from 1 January 2005, dividends, interest, royalties and other tax withholding regime are taxed at a flat 19%.
Natural persons carrying on business (alone or in partnership) may opt for a flat tax rate of 19% under certain conditions. The majority of non-residents' incomes are taxed at a flat rate of 20%, without, however, that non-residents should be able to exploit any deductible expenses.

The tax system in HUNGARY

Income tax:
In principle, income tax in Hungary is owed by all who are tax resident in this country, regardless of nationality.
To determine the tax base (which includes basically all income), the Hungarian legislature has provided an interesting sistem, in which the exemptions or deductions are expressed in percentage, in the form of tax credits:
-18% Of salary income;
-25% Of voluntary contributions to pension schemes, public or private;

-30% Of an employee's contribution to mutual insurance funds;
-20% Of revenues from certain categories of investments;
-30% Of donations to charities;
-40% Of a bank loan installments related to the purchase of a house etc .
However, if an individual's annual income is greater than 6.5 million forints, it can not receive more than deducting voluntary contributions to pension and health funds and any family allowances.

2. Planning for tax purposes-definition, principles

Planning for tax purposes within the meaning of tax optimization is technical by contributor shall proceed to the choice of the most favorable solutions offered by fiscal legislation which he is or may be applicable.Tax planning is allowed, situated within licitului/law, even if sometimes tends toward edge of legality.

The basic feature of tax planning is that it helps reduce tax obligations by means which, although they are the letter of the law, alcoholism, in contradiction with the spirit. Aggressive tax planning is to take advantage of technical details of a fiscal system or disparities between two or more tax systems in order to reduce tax obligations.

From the point of view tax planning tax authorities aggressive :

- eroding tax bases influencing the increase in the level of duties;
- affect the functioning of the internal market with the consequences for competition, and in particular between small and medium-sized companies;
- distorts fairness tax systems in relation to tax payers (different tax treatment for the same transaction).

Tax authorities interest is to ensure that:

- income in their territory or by their residents are charged accordingly;
- in the implementation of Conventions to avoid double taxation, cases of exemption shall apply only if there is a tax in the other state and to be clearly stipulated a prohibition on taxation of income under the conditions in which it was charged in the other Member State;
- the state which should be to tax in accordance with the Convention, not to apply rules for exemption, or tax credit in whole or the rate of tax of 0 %.

From the point of view commercial companies, they are interested in the first place in obtaining a net profit which satisfies the requirements of shareholders to obtain dividends as high as possible.

How do?

By maximizing both gross profit-influenced generally by external factors, such as: the market, competition, geopolitical conditions, as well as by minimizing taxation by the choice of the most favorable tax jurisdictions.
It can be seen in such a way that state interests are different from those of economic agents.
Most of the times tax authorities shall bring into force the sign of equality between tax planning and tax evasion, often border between them is very sensitive.
Tax evasion is the term general efforts to lend taxes to diminish fiscal obilgatiile through illegal means. What may be called the legal or illegal in the field of duties depends on the national laws and varies from one Member State to another.
For this reason, the OECD has made efforts to give a definition of tax evasion, a definition that would be generally valid and which defines tax evasion as the one action of the taxes which are

in breach of the law and which can be proved to have been made in order to reduce or to avoid paying taxes.
Border between tax evasion and tax planning is often hard to find, this always depending upon the factors and economic circumstances of each case, in a word, of the substance of each transaction or economic operations.
For the Member States it is difficult enough to protect their national tax base consequences of aggressive tax planning. To this end have been adopted, in national laws, rules to combat and penalize abusive tax arrangements, artificial, which is positioned beyond the letter of the law and which have as their sole purpose circumvention of the payment of taxes.
In this context, the European Commission recommends entering into the national law of each Member State of the provision:
"Shall not be taken into account artificial agreements or series of artificial agreements which have been introduced in order to essential to avoid taxation, and which lead to a fiscal incentive. For tax purposes, the national authorities must treat such artificial agreements by reference to their economic nature."
By "artificial" means without commercial content and cost-effectively. In the Fiscal Code ,in Article 11, has been taken over European Commission recommendation:
"The amount of a tax or a fee for the purposes of this code, the tax authorities may not take into account a transaction that does not have economic purpose, or can his reassignment form a transaction to reflect economic content of the transaction.
By artificial means transactions transactions or series of transactions that do not have a content economic and which may not be normally used in the context of ordinary economic practices, the essential aim of which is to avoid taxation or to obtain tax advantages which otherwise would not be granted."
As can be seen from the foregoing, in matters of taxation, we faced with three concepts:

- fiscal planning;
- aggressive tax planning;
- tax evasion.

All are based on a behavior oriented to minimize tax burden ,but it can be legal or illegal.

Not to shall be governed by the law, planning for tax purposes must be in close connection with economic planning, in other words have "economic substance".
An indication of the time schedule for tax purposes by the fund goes hand in hand with lower operating costs, redefine business functions, the restructuring commercial circuits of goods and services or the penetration of the new markets.
Planning for a successful fiscal risks should be allocated in accordance with functionality, and allocating profits must be carried out on the basis of functionality and risks involved.
Allocating profits between companies members of a group, on the basis functionality of each entity and the risks involved, shall be carried out through the prices established for the transactions inter-company.
These prices are called, "transfer pricing".
Market price = amount that would be paid by an independent customer an independent provider at the same time and in the same place, for the same good or service times for a similar, under conditions of fair competition (source: Article 7 (1) Point 26 of fiscal code).
The transfer price = "the transfer price shall be the price at which an undertaking transfer goods physical, intangible property or provides services to associated undertakings".

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