



European Administrative Cooperation in the Field of Taxation

Florin TUDOR*

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ABSTRACT

The operation of different taxation systems in EU member states appears to promote more increasingly the appearance of double taxation entailing fraud and tax evasion. The phenomenon is amplified by the remaining control competences at the national level, and the lack of administrative cooperation in tax matters at EU level is being a decisive factor in delaying the causes with the consequence of prescription of the facts which brings serious damage enhanced EU budget. This study aims to examine the legal ways and means to ensure that the information, reports, statements and other documents mandatory to the administrative or judicial proceedings to be legal required from the counterparts existing in other members states invoked as evidence by their competent bodies.

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1. Introduction

It is often found that companies are established with the only purpose of carrying out one large commercial operations unregistered in the accounting and then are abandoned. Among other facts mentioned in the expert reports [2, 7] are the distinguished use of double records, the preparation and presentation of false data in the balance sheets and balances, hiding the commercial activities, not declaring subsidiaries, affiliates, points of work, warehouses and depots, presenting false documents regarding the import-export operations.

The Treaty or the subsidiary documents require the legal obligation for some Member States to notify the taxpayer about the decisions and acts relating his tax liability. Because of this, difficulties are encountered by the tax authorities, thus when the taxpayer has established in another Member State, the tax authorities needs to request the cooperation of the competent authorities from the Member State in which the taxpayer has established.

Consequently, a Member State can not manage its internal taxation system, especially in regarding with the direct taxation, in the absence of information from other Member States. To counter the negative effects of this phenomenon, it is essential to establish a new administrative cooperation between the tax administrations of the Member States. It is necessary to create tools in order to build confidence between the Member States, by establishing rules, obligations and rights for all Member States.

Throughout this study we will analyze not only the need to develop and adjust some new normative acts that would replace the existing provisions, which are no longer relevant to the present needs, but we will also analyze in which way these provisions can help to counter the tax evasion and fraud through double taxation, a wide phenomenon with which is facing the Commission nowadays.

In this regard, we will study the relevant European reports in the field, such as Commission Report of Expert Group on removing tax obstacles to cross-border Venture Capital Investments, 2010; EU financial interests - Fight against fraud – Annual Report 2009, but also the compared doctrine updated from France and Romania.

2. The importance of developing a new bill with unitary character

The mobility of taxpayers, the number of cross-border transactions and the internationalization of the financial instruments have developed very strong, which makes it difficult to establish the correct assessment of taxes by the Member States. The tax authorities from the Member States are facing a tax evasion phenomenon that tends to take very large proportion due to the avoiding of income [9]. You can even say that the illegal acts in the economical-financial field are the result of the imperfections of the legislation, the lack of regulations, but above all, uniform rules of work in double taxation [7].

* Faculty of Juridical, Social and Political Sciences, "Dunărea de Jos" of University of Galați, Romania. E-mail address: florin.tudor@ugal.ro (F. Tudor).

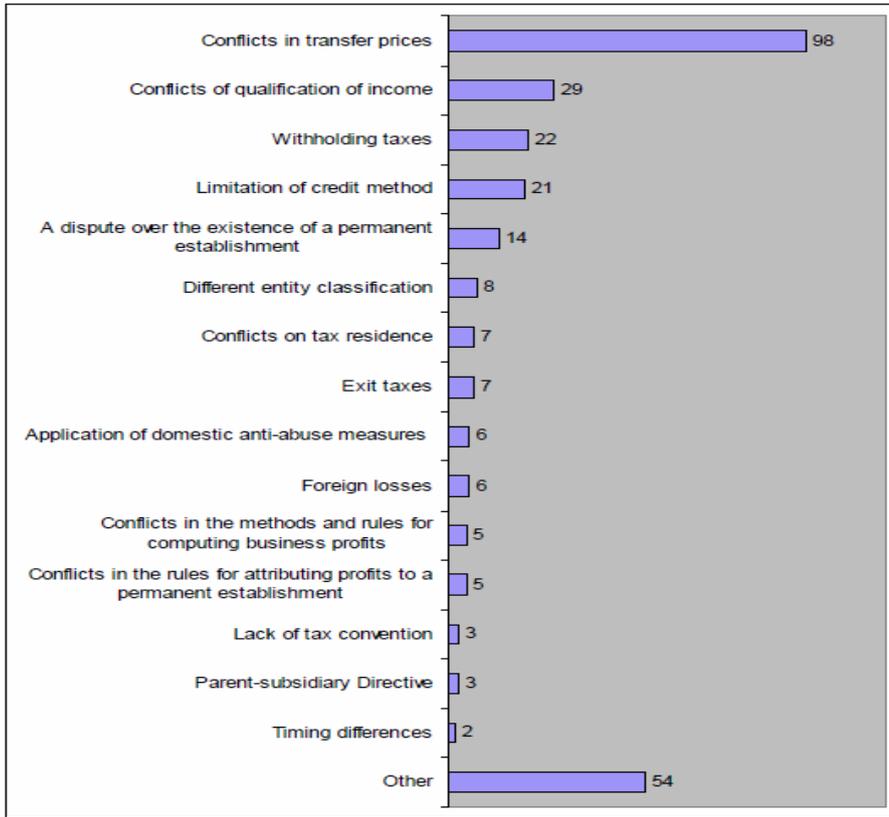


Figure 1. Reason(s) for the double taxation and the approximate amounts of income, tax, interest and penalties involved

Source: European Commission, Summary Report: Consultation on Double Tax Conventions and the Internal Market, page 18

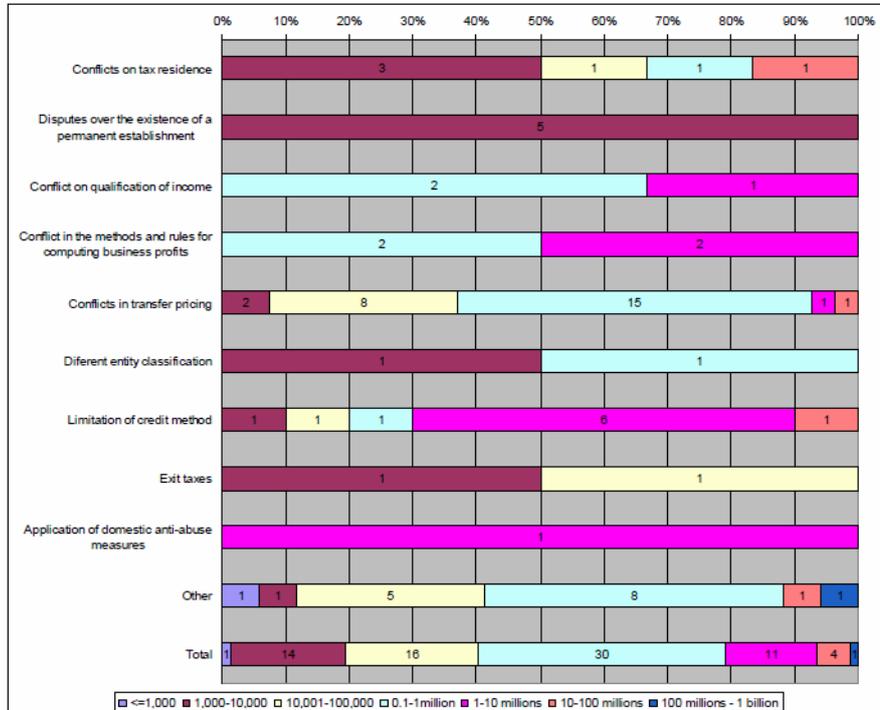


Figure 2. Amount of tax

Source: European Commission, Summary Report: Consultation on Double Tax Conventions and the Internal Market, page 20

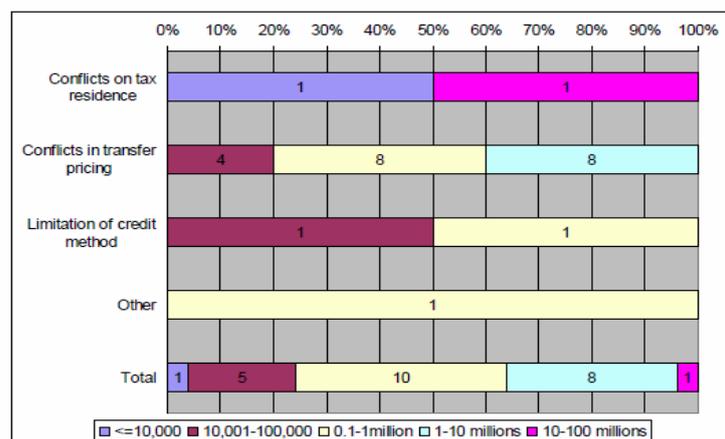


Figure 3. Amount of penalties and interests

Source: European Commission, Summary Report: Consultation on Double Tax Conventions and the Internal Market, page 20

The Directive 77/799/EEC, even with its later amendments, was designed in a different context from the current requirements of the internal market and no longer allows the completion of the new requirements in the administrative cooperation. Taking into account the number and importance of the adjustments necessary of the above-mentioned normative act, a simple change of it would not be sufficient to meet the objectives outlined above. The old Directive should therefore be repealed and replaced by a new legal instrument. This instrument should apply direct and indirect taxes and duties that currently are not subject to EU legislation. In this respect, the new directive is considered as a real adequate instrument to allow an effective administrative cooperation.

The new directive is based on the achievements of the Directive 77/799/EEC, but must provide clear and precise rules governing the administrative cooperation between the Member States, if this is necessary, in order to establish, especially concerning the exchange of information, a broader range of administrative cooperation among the Member States. It should, also, that the clearer rules to make possible in particular the inclusion of all businesses and individuals from the Union, given the growing range of legal construction, including, but not limited to the traditional constructions such as trusts, foundations and investment funds as well as any new tool that can be set by national taxpayers. There should be more direct contact between the local or national offices responsible for the administrative cooperation from the Member States, the rule is the communication between the central liaison offices. The lack of direct contacts leads to inefficiency, to the use of insufficient arrangements for the administrative cooperation and to delays in communicating information. It is therefore necessary to provide provisions that allow more direct contacts between services for more efficient and faster cooperation. The distribution of skills to the connection departments should be provided within the national provisions of each Member State.

The Member States should exchange information regarding the specific cases if this is requested by another Member States and should take the necessary steps to obtain this information. The standard of the "foreseeable relevance" is meant to create the conditions for exchange of information in tax matters to the greatest extent possible and at the same time, to clarify that the Member States are unable to engage in "investigations to find evidence "or to request information unlikely to be relevant to the taxable incomes of a given taxpayer.

3. The administrative cooperation between the tax administrations of the Member States

Given the legal requirement in some Member States to notify the taxpayer regarding the decisions and acts on its tax obligations and the difficulties encountered because of this by the tax authorities, including when the taxpayer has been established in another Member State, it is desirable that, in these cases, the tax authorities to be able to request the cooperation of the competent authorities of the Member State in which the taxpayer has established [1].

Through the Directive 2011/16/UE, adopted in 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, it was adopted a completely new approach by creating a new text which gives to the Member States the powers necessary for an effective international cooperation, to counteract the negative effects of the constantly increasing globalization on the domestic market. Since the objective of this Directive, namely the establishment of an effective administrative cooperation among the Member States to counteract the negative effects of the increasing globalization on the domestic market can not be sufficiently achieved by Member States and, for reasons of uniformity and efficiency can be better achieved at Union level, the Union may adopt measures in accordance with the principle laid down in Article 5 of the Treaty on the European Union. In accordance with the principle set out in that Article, this Directive does not exceed what is necessary to achieve that objective. The competent authority of each Member State shall notify the competent authority of any other Member State, by automatic exchange, the information on the tax periods from 1 January 2014, which are available about the residents of that Member State and

regarding the following specific categories of income and capital, as understood on the basis of the national legislation of the Member State shall communicate the information:

- (a) income from employment;
- (b) the remuneration paid to administrators and other persons treated as such;
- (c) life insurance products not covered by other legal instruments of the Union in the case of information exchange or other similar measures;
- (d) pensions;
- (e) the ownership of real estate and real estate income.

Before 1 January 2014, the Member States shall inform the Commission regarding the categories listed in the previous paragraph about which they have available information. They shall inform the Commission of any subsequent changes made. The competent authority of a Member State may indicate the competent authority of any other Member State that does not want to receive information on the income and capital categories mentioned above or does not want to receive information on income or capital that does not exceeds one certain threshold. Also the Member State concerned shall inform the Commission thereof. Any Member State may be considered a state which does not want to receive information if will inform the Commission regarding any of the categories about which has available information.

Before 1 July 2016, the Member States shall provide to the Commission every year statistics on automated trade volume and where possible, information on the administrative costs and benefits and other relevant related exchanges that took place and any potential changes, for both the tax administrations and for third parties. Before 1 July 2017, the Commission will submit a report which will provide an overview and evaluation of statistics and information received relating to issues such as costs and other relevant costs and benefits of the automatic exchange of information and practical related. If appropriate, the Commission will submit to the Council a proposal relating to the categories of income and capital and / or conditions above, including the condition that the information concerning the residents of other Member States to be available.

At the request of the competent authority of a Member State the competent authority of another Member State shall notify the recipient, in accordance with the rules governing the notification of similar instruments in the requested Member State, all acts and decisions issued by the administrative authorities of the requesting Member State and relating to the application on its territory of the legislation regarding the taxes and charges covered by this Directive.

The applications for notification shall indicate the subject of the instrument or of the decision that needs to be notified and indicates the name and address and any other information which may facilitate its identification. The requested authority shall inform the requesting authority immediately of its response to the request and shall communicate, especially, the date of the notification of the recipient regarding the act or the decision. The requesting authority shall make an application for notification only if it is unable to make the notification in accordance with the rules governing the notification of the instruments in question in the requesting State or if such notice would cause disproportionate difficulties.

4. Conclusions

The protection of the EU financial interests and combating fraud are areas of common responsibility of the European Union and its Member States [3, 4]. In the areas in which the Member States implement the budget and in order to collect the own resources of the EU, the European legislation requires to the Member States to report suspicions of fraud and any other irregularities detected affecting the EU financial interests. Since the tax situation of one or more taxable persons established in several Member States often is of common or complementary interest, it is necessary to provide the possibility that these people to be controlled simultaneously by two or more Member States, by mutual agreement and voluntary.

It is recognized that the mandatory automatic exchange of information, without preconditions is the most effective way to improve a correct assessment of taxes on cross-border situations and to combat fraud. For this reason we believe that it should be therefore followed a phased approach, starting with the automatic exchange of information.

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