

ADMINISTRATIVE COOPERATION IN THE FIELD OF TAXATION

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Abstract

The steady mobility of tax payers makes the correct imposing of taxes and revenues difficult, creating the possibility of double imposing of taxes on revenues and indirectly leads to an increase of tax evasion, because of these, in the European Union and all member states adopted a series of measures which can assure the stability of internal markets.

In accordance with the european legislation, the Tax Procedure Code is the one which regulates the administrative cooperation of Romania and European Union in order the assure a steady flow and exchange of information concerning taxes and laws aplying in each member states, all these information is concerned with the taxes at the source.

Keywords: *Public Law, Tax Law, administrative cooperation, information exchange, central liaison office.*

1 The premises of administrative cooperation in the field of taxation

Globalization, the mobility of work force, the rising numbers of international tranzactions and the international means of payment had their positive effects, such as the growth of investments, the increase of production of goods, the decrease of unemployment rate, the fast dissemination of the results of research and applied development, the improvement of quality of goods and services, the fluidity of payments, but beside all of these, there are negative effects as well, such as double or multiple imposing of taxes and a growth of tax evasion.

For all these motives, inside the universal international organizations or regional organizations such as United Nations (UN), Organisation for Economic Cooperation and Developement (OECD) and European Union (EU), the member states had elaborated a sistem of law rules which can stop these negative effects [1]. This concurrent effects has produced a series of conventions models which can avoid the double imposing of taxes, there are bi-lateral or international agreements which adopted a series of measures that can provide a fair imposing of taxes upon tax payers and their assests, in order to avoid tax evasion or double imposing, but in the same time protecting each state's interest and the interest of tax payers as well.

Under these circumstances, was adopted the Directive nr 77/799/ CEE of the Council, concerning *reciprocal assistance* and aid toward the Authorities of each

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member state, which deals with the direct tax imposing, and tax insurances, as the first step in administrative cooperations of states.

The changes which had taken place in the EU, created the circumstances in which this regulation instruments, has to be changed with a new measures, which can be applied to all type of taxes, direct and indirect taxes, which are not subjected to EU legislation, and all these new measures has to assure the efficiency of administrative cooperation.

In accordance with article nr.113 and article nr.115 of Treaty on the Functioning of the European Union [2], has been adopted Directive 2011/16/ EU of the Council of the European Union on *administrative cooperation in the field of taxation* and repealing Directive 77/799/CEE, published in the Journal of European Union nr.L 64/11.03.2011. The Directive intends to create the means and norms which can create a trustworthy relations among the member states, elaborating norms, regulations and obligations equally apliable to all member states. This Directive represents a new approach, enabling all the states concerned and providing tools that makes the international cooperation efficient, and in the same time tempers the negative effects of globalization upon the National markets.

In accordance with article nr.29 of Directive 2011/16/EU, all the member states have the obligation to adopt and apply all the norms, acts and regulations enabled with the power of Law and have to apply all the measures provided by this. It is necessary the direct contact between the national offices responsible of administrative cooperation of the member states, in order to provide the relevant informations concerning taxes and exchange of this information, the rule beeing the direct communication between *central liaison offices*. The absence of direct contacts between the offices, leads to inefficiency, the insufficient use of cooperations and exchange mechanism and a not justifiable delay in transmitting these informations. In order to achieve this, it is necessary to provide norms to assure a more efficient and more faster means of cooperation. The distribution of competences between the connection departments has to be regulated in the internal laws of each state.

The problems generated by the tax evasion transgressing international borders, the aggressive fiscal planning and unfair fiscal competition has became the subject of main concern in the EU and worldwide as well. The decrease of fiscal base reduces with a considerable amount the national income from taxes, thus preventing the member states to apply a fiscal policy which contributes to economic growth. In order to solve these obstacles, the means and methods provided trough Directive 2011/16/EU of the Council of the European Union were enforced trough the Directive 2015/2376/EU of the Council of the European Union, which modified Directive 2011/16/EU concerning the mandatory exchange of informations concerning taxes, bringing in addition a *transparency* in the relationship of the administration authorities of each member state of EU.

The activity of multinational companies is in the attention of international organizations, the European Union's included. The dimensions of these activities, their capacity to distort competition, the aggressive fiscal planning of these companies, in order to avoid taxes on revenues and income, are the reasons why Directive 2016/881/EU of the Council of the European Union was adopted and modified Directive 2011/16/EU which concerned the automatic exchange of informations in all fiscal areas. In accordance with these new Directive, the multinational enterprise groups (MNE Groups) are obliged to report each year and for each fiscal jurisdiction under which they operate their activities, their income, the profits they obtained, previously, the income taxes they have paid or they accumulated. The MNE Groups should also report: the number of their employees, their current assets, their operating capital, the accumulated, not distributed revenues to shareholders, their non-currents assets they hold under each fiscal jurisdiction. In the same time, MNE Groups have to identify each entity, member company of the group and the fiscal jurisdiction they belong and they also are obliged to provide access to information concerning the economic activity of each entity.

These information are compiled into a *yearly report* in each state where the entity has its activity. These information are used in order to estimate risks of tax evasion and disobeying laws and regulations, to devise economic analysis and statistics and is the subject of the automatic exchange of information between the member states, without transgressing inside trade informations of the company, production secrets or professional secrets or trade/commercial strategies or any other informations, that if become public, is in the contrary to public policy of free information. The Council of the European Union has taken into account the *standards of OECD* which prevents the eroding of base taxing and the transfer of profits [3].

2 The Romanian regulations concerning the administrative cooperation in the field of taxation

The administrative cooperation concerning the Romanian Tax Procedure Code is foreseen in title X, "International aspects", Chapter I "Administrative cooperation in the field of taxation". These regulations represents the adoption and implementation of Directive 2011/16/EU and all the connected directives in the Romanian Tax Law.

The Tax Procedure Code which foresees the norms and procedures under whose guidance Romania cooperates with the other member states of EU, and makes it possible the exchange of informations is *predictably relevant* for the administration and tax imposing under the national laws of each member state (article 284 line 1) concerning all the types of taxes imposed by the state, central or local administrative units, that could be, county, district, city or regional

administrative units or any other authorities who act on behalf of the units mentioned above (article 285 line 1).

There are *exceptions*, some categories of taxes such as taxes for certificates and other documents provided by public authorities, and taxes imposed on public utilities such as water, electricity (article 285 line 3).

In accordance with article 285 line 2, the dispositions provided by Title X *does not apply* to the following :

a) VAT (value added tax), custom fees and excizes which are subjected to other european norms or regulations concerning the administrative cooperation of EU member states.

b) Taxes and fees mandatory for national health insurance or any other social security contributions or any other taxes applied by public authorities concerning social security issues.

The *relevant predictability standard*, as it is foreseen in european norms and regulations, has its functions to make it possible the exchange of relevant informations, in way that the EU member states has no right to ask for informations concerning a certain entity subject to taxes whose contribution is not relevant as a tax payer, this way compelling other states to ask for relevant informations. This standard has its goal to increase efficiency, decrease costs and improve the efficiency of informational flow.

3 Competent Authority

The competent authority in Romania for assuring these type of information exchange concerning Taxes among the EU member states and the European Commission is the National Agency for Tax Administration, short form (ANAF), an institution which is presided by the Ministry of Public Finances in Romania. The president of ANAF nominates the central liaison office for information exchange, and ANAF has the obligation to inform the European Commission about the central liaison office.

Through the Order nr.353/2013 of the Ministry of Public Finances was created the Department for International Information Exchange of the ANAF - The General Department for Information Exchange - being the central liaison office for the administrative cooperation of EU member states.

The Romanian competent authority is the *central liaison office* who assigns the connection departments and authorized clerks, the having the responsibility to make a list of these departments and update this list periodically, the list of authorized clerks as well and make them available to the central liaison office and to all the central liaison office of the other EU member states and to the European Commission.

In the case when a department or an authorized clerk gets a request or send a request or answers a cooperation request, first informs the central liaison office of Romania, in accordance with the procedures foreseen by the later. In case, when a

department or an authorized clerks gets a request, which is above their competencies, foreseen by the romanian national laws or regulations, without further delay they forward this request to the central liaison office of Romania and informs the requesting authority as well.

4 The cooperation forms in Tax areas

The forms of cooperation in Tax areas are the following: the exchange of information, the presence of authorized personnel in the administrative cooperation offices and investigations, simultaneous controls, administrative notifications, feedback activities, exchange of experience and good practices.

4.1 The exchange of information

In accordance of the Tax Procedure Code, the exchange of information could be: at request, automatically mandatory and spontaneous.

The information exchange at request is foreseen in the articles 288-290 of the Tax Procedure Code. Thus, at the request of the authority of another member state, the romanian competent authority or department provides and gives the requested information, as it is foreseen in article 284, line (1) of Tax Procedure Code, this could be informations which are aviable or can be obtained through administrative controls and reports. The requested romanian authority assures and provides the conditions to make the control and case study in order to get the requested information. In case that, the romanian competent authority decides, that is not necessary any other administrative case study, the later informs the requesting authority of the other member state the motives of its decision. In accordance of article 286, lit.g, defines the *administrative case study* as all the controls, gathering of information and reports and all the other actions of the member states in order to assure a fair and correct application of the Tax Law. The Tax Procedure Code forsees in article 290 the terms and conditions of the information exchange at request.

The automatic mandatory exchange of information consists of sistematic exchange and communication of pre-defined information to another member state, without further additional request, at regular intervals, as it is foreseen in articles 291-292³ of the Tax Procedure Code. The romanian competent authority or department informs the reciprocal authority of the other member state, trough automatic exchange of information aviable concerning the taxed intervals begining with 1st of January 2014, these information concerns the residents of the requesting state and comprises the following categories revenues and capital, both defined by the romanian national Laws:

- a) yearly income
- b) CEO-s and other supervising personels revenues
- c) life insurance produts and bonuses, which are not subjected or regulated by the european laws

- d) retirement money
- e) assets, fixed and current assets, property rights and such.

The exchange of the information takes place, at least once a year, under the interval of 6 month after the end of the romanian tax year, trough the time under which these information are made aviable.

The competent romanian authority can point out to the competent authority to any other member state the fact that he does not want to receive any information concerning the above mentioned categories, income and/or capital which are not surpassing a certain limit defined by the romanian law, and Romania informs on the European Commission about this.

The romanian competent authority or department informs the European Commission about all the categories of incomes and capital which are subject of the romanian Tax Procedure Code and the information aviable and any modifications brought by or suffered in the meantime. In case, if Romania does not informs the European Commetee or provides the commetee with the aviable informations, then automatically will be considered as a state which does not want to receive this type of information.

In the same time, the romanian Tax Procedure Code regulates the mandatory reporting of the Reporting Finance Institution to the competent tax authority or department or institution. The tax authorities collects the data, and the central liaison office operates and transmits the information collected toward other member states. This exchange of information takes place yearly, in the interval of 9 months starting with the end of calendar year or other period for reportung which those information are related or reported.

Thus the Reporting Finance Institution are obliged to apply *the reporting norms and use precaution*, those are foreseen in annexes nr.1 and 2 of the Tax Procedure Code. According to these norms and regulations and using the principle of precaution, the romanian reporting authority informs the reciprocal reporting authority of any other member state, trough the automatic mandatory exchange of information, these information consists of the data starting with 1st of January 2016 and concerns an *account which is subject to reporting* [4] as it follows: the identification data of the resident or company which is subjected to raporting, the account holder's name, the account number, the bank's name or any other institution which beholds that account, the value of the account, payments, income revenues, dividents, payments receivable, other revenues or incomes generated by that account holder, in a period of one calendar year, all these are subject of survey and raporting by the romanain Reporting Finance Institution.

The term Finance Institution means one institution that is the custody (an entity wich owes an important part of the subject, such as third party, or insurer or lender) and beholds an important part of tranzactions acting as an investment entity or as a specific Insurance company of the beholder.

The term Reporting Finance Institution could be any other romanain financial institution, which is not a Not Reporting Institution [5], such as (i) any other finance institution which resides in Romania, but excludes any other office or representative of the same institution which does not resides in Romania and (ii) any other representative or office which is abroad, but its main office resides in Romania.

In case that Romania signs a treaty with other member states, that will provide automatic exchange of information concerning incomes and capital, with two or more member states, then Romania is obliged to inform the European Commission and this later provides and makes it aviable these information toward other member states.

In the same time, article 291¹ of the Tax Procedure Code, in accordance with the european norms and regulations, prescribes the mandatory exchange of information concerning the anticipated tax decisions which are applied abroad or at the customs and the anticipated agreements concerning transfer-pricing.

In case that the romanian competent authority defines, prescribes or modifies an anticipated tax decision which concerns taxes and fees at customs and/or across the borders or an anticipated agreements concerning transfer-pricing after the date of 31st of December 2016, the authority informs the member states about these changes trough the automatic mandatory exchange of information and the European Commission.

The treaties concerning transfer-pricing, bilateral or many sided are exceptions, they are not subjected to the automatic mandatory exchange of information, if the international treaty does not allowe these information to become public to third parties. These information can become public only with the permission of the third party involved or by the permission of the issuing stat's competent authority.

In accordance with article 291² of the romanian Tax Procedure Code, untill 1st of January 2018, the romanian central liaison office puts at the disposal of the European Commission *yearly statistics* concerning the *volume of the automatic exchange of information*, informations concerning residents of the other european states in Romania, any other informations about anticipated tax decisions which concerns taxes and fees at customs and/or across the borders or an anticipated agreements concerning transfer-pricing.

In order to measure the efficiency of this type of administrative cooperation, the statistics forwarded to the European Commission will comprise, if possible, informations concerning the costs and benefits of such cooperation between the states and any other relevant characteristics of the automatic mandatory exchange of information.

The automatic mandatory exchange of information concerns multinational enterprise groups (MNE Groups) as well. In accordance with article 291³, the final mother company of a MNE Group resides or has his main office in Romania, has

the obligation to hand in a report for each member of the Group. The mother company will forward the reports about the international member companies of the group to the romanian competent authority and this forward the reports to the authorities of the country they are residing in and they are subjected to tax imposing of that country where they reside or they have a permanent office or representing office.

The spontaneous exchange of information consists of random communication of data and information in any given moment of time without a further agreement or treaty toward a member state as it is foreseen in article 292-293 of the romanian Tax Procedure Code.

The romanian competent authority informs and gives information to the reciprocal competent authority of any other member state under the following circumstances and condition:

a. the romanian competent authority has proof that indicates the assumption that there is a tax loss or evasion in another member state;

b. a company or a resident obtains a tax reduction or a tax exception in Romania, so this way there must be followed by a tax increase in another member state;

c. a company which is subjected to taxes in Romania that deals with another company which resides in another member state, the tax reduction achieved in Romania leads to the same tax reduction in the other state or in both states or any given number of states that are involved in these type of transactions;

d. the romanian competent authority has proof, that provides the base of an assumption that there is an artificial transfer of money or capital among the members of the venture company or international group of companies which leads to a tax reduction;

e. the information given by the romanian competent authority to another member state made it possible to obtain important information concerning the debt of the the tax owed by the company to the second state that he resides in.

The romanian competent authority who holds or it is given this type of information forwards these types of information to the competent authority of any other member state who is interested in as soon as possible starting with the data when this information are made available received these information or public. The romanian competent authority who acknowledges or confirms by electronic means, that he received these information to the sending authority, without further delay, which can not exceed 7 working days since receiving them.

4.2 The presence of authorized personnel in the administrative cooperation offices and investigations

Another form of administrative cooperation is foreseen in article 294 of the romanian Tax Procedure Code and it consists in the presence of the authorized clerks, both romanians and clerks of the other member states who are working in

or together with the romanian authorities in case studies and or data gathering and measuring conducted by the romanian authority. Thus with an agreement between the requesting authority of a member state and the romanian competent authority, and under the conditions defined by the later, the authorized clerks of the second state are allowed to be present in the offices of the romanain authorities and are allowed to be present or be involved in any case studies or investigations conducted by the authorities in Romania.

In case that the requested information are in files where the romanian authorized personnel have acces to it, then the reciprocal authorized personnel of anu other member state receive a copy of these files. In case that the copying and giving information is permitted in accordance of the romanian national laws, the agreement mentioned above also gives the opportunity for the other member states' clerks to interview companies or subjects of an investigation case and are allowed to study ledgers of companies and the information provided by the later. The refusal of a company or resident subject of an investigation and the denial to follow the orders of an authorized competent authority of another member state, is considered as a refusal toward the romanian authorized competent authority as well and a rejection of the investigation and clerks. The authorized personnel of another member state who are present in Romania, have the obligation to present at any given moment their written authorization and empowerment as beeing official representatives and have to provide their ID as officials.

4.3 Simultaneous controls and investigations

The conditions and circumstances of administrative cooperation during simultaneous controls and investigations is foreseen by article 295 of the romanian Tax Procedure Code and consists of simultaneous tax controls made by the competent authorities of several member states, every authority investigates the subject residents in the country they represent and who are subjected to common tax investigations and the data each authority obtained is forwarded to make public trough mutual exchange of information.

The romanian competent authority identifies independently the subject (resident or company) of investigation and proposes a simultaneous control and investigation. The romanian authority sends a notification about the subject investigated to the other member states involved in the case and proposes a simultaneous control and the motives of this proposed control as well and the intervals and lenght of this investigation.

In case that the competent authorities of another member state proposes a simultaneous control and investigation, the romanian competent authority decides if he wishes to take part in this simultaneous control or not, and informs the requesting authority about his decision and sends a written notification about acceptance or refusal and his motives.

In case of simultaneous control and investigation, the romanian competent authority assigns an authorized clerk whose is to supervise and to coordinate the control operations.

4.4 Administrative notifications

The romanian Tax Procedure Code defines trough article 296, the administrative notification as a means used by the european member states to a fair apply of the tax law, data collection and a better collection of taxes owed by its residents.

At the request of a competent authority of another member state, the romanian competent authority forwards all the data, files and papers made by the requesting states' competent authority, which are relevant to the tax imposing on that state territory foreseen by article 295. The notification requests defines the subject of the file and investigation and the decision made by the later, the name and address of the subject, the country where it resides and any other relevent information which can be useful to identify the subject of the investigation. The requested competent romanian authority informs the requesting authority of the other member state, concerning his decision and also informs de data when that decision was taken, the subject of that investigation and the notification of that subject.

The romanian requesting authority hands in an aplication for request in accordance with article 295, only in case that he can't send in the notification in accordance with the means used to conduct an investigation in Romania or in the case if such a notification can create exagerated difficulties. The competent romanian authority can forward any document trough recomended letters or e-mails, fax or any other electronic device to the reciprocal authority of anither member state or authorized personnel who resides in another country.

4.5 Feedback activities

The feedback activities concerns the aknowledgement and usefulness and the results of the exchanged information and data and are defined by article 297 of the romanian Tax Procedure Code. Thus, in case that the competent romanian authority exchanges information at request or spontaneous, the romanian authority can also ask the reciprocal authority to make aviable the results of their activity and the usefulness of that information received. In case that the romanian authority gets such a request, the receiving romanian authority also sends in a notification or an answer to the request, without causing a data breach or harm professional or manufacturing secrets, planning strategies or producing injuries to personal data protection, as they apply in romanian laws, as soon as possible, but not exceeding the period of 3 months time, starting with the data of aknowledging the results of the requested informations.

The competent romanian authority notifies yearly about the results of using the information provided trough the automatic mandatory exchange of

information, in accordance with the bilateral agreement concluded by the states involved.

4.6 The exchange of experience and good practices

The exchange of experience and good practices are obligations foreseen by article 298 of the Romanian Tax Procedure Code, in accordance with the European norms and regulations. Together with the European Commission and all the other member states, the competent Romanian authority examines and evaluates the administrative cooperation in applying taxes and exchange of experience in order to improve the quality of this cooperation, and if it is the case to create together norms and regulations which can contribute to the improvement and efficiency in this area.

Together with the European Commission and the other member states, the competent Romanian authority can elaborate guiding lines concerning any aspects of exchange of experience and good practices needed during the process of administrative cooperation.

5 Conclusions

The fast dynamic of economics and production, the steady mobility of the working force, the movement of capital across borders, the international companies and venture companies, the steady growth in number of these companies, the measures of efficiency, the growth of profits, incomes, the use of offshore intermediate companies to avoid taxes or to reduce the extent of taxes, the optimization and maximalization of income to residents through tax evasion, made it imperative the cooperation between the European states to protect the Public Finances.

The administrative cooperation in the field of taxation is one of the means used by the European Union in his strategy to eradicate and diminish tax evasion and to improve the collection of taxes and other sources to the state's budget or public income.

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[2] In accordance with article nr.113 of Treaty on the Functioning of the European Union, The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect

taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition. Also, in accordance with article nr.115 of Treaty on the Functioning of the European Union, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.

[3] On 19 July 2013 the Organisation for Economic Development and Cooperation (OECD) published its Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan), which is a major initiative to modify existing international tax rules. On 5 October 2015 the OECD presented its final reports, which were endorsed by the G20 Finance Ministers. During the meeting of 15 and 16 November 2015, the OECD package was also endorsed by the G20 leaders. The work on Action 13 of the BEPS Action Plan resulted in a *set of standards* for providing information for MNE Groups, including the masterfile, the local file and the country-by-country report. It is therefore appropriate to take into account the OECD standards when establishing the rules on the country-by-country report.

[4] The term “account which is subject to reporting” means an account that belongs to a Reporting Finance Institution, and the holder of the account could be a resident or a company or companies which is under investigation, under the condition that the subject investigated was identified as such in accordance with the Tax Procedure Code.

[5] Not Reporting Finance Institution are those institutions which manage retirement funds, investments funds, public institutions which get tax exception, under the circumstances that they represent a low level of risk for tax evasion and is on the list of institutions that are not reporting institutions and they don't represent an entity that produces injuries to the reglementations of chapter X of the Tax Procedure Code.

[6] The final mother company of a MNE Group is the entity that created the MNE Group and respects the criteriae foreseen in Annex 1, section 1, pct.7, Tax Procedure Code.