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COMBATING TAX EVASION AND TAX AVOIDANCE BY EXCHANGING OF TAX INFORMATION – MACEDONIAN EXPERIENCE ON THE PATH TO THE EU INTEGRATION

Since 2007 Macedonian authorities have been strongly committed to the idea to become foreign direct investors' choice number one. Additionally, Republic of North Macedonia has strived to response to tax competition among Western Balkan countries. In such environment, every Macedonian Government has recognized the “open door tax policy” as a key ingredient for attracting foreign capital. Tax competition has pushed them even further in the “race to the bottom”. The Macedonian relaxed tax policy regarding the profit and income taxation, has been perceived as a perquisite for economic development as an important condition for EU membership. For many years Macedonian tax system has been promoted “as friendly and comfortable as possible” for doing business. The authorities have overlooked and neglected the problems and potential tax revenue losses. However, the EU agenda has put additional pressure on Republic of North Macedonia. These circumstances drove the country at a crossroad. The dilemma has always been: to continue with one of the most competitive tax policies, through the application of a proportional 10% income tax rate and multiple tax benefits for legal entities, or to join the international fight against tax evasion, tax avoidance and aggressive tax planning. In light of the tax harmonization with EU tax legislation (and OECD tax rules), the fiscal and political arguments prevailed, aiming to prevent the future loss of potential tax revenues. Thus, Republic of North Macedonia signed the Multilateral Convention on Mutual Administrative Assistance for Tax Purposes on June 27, 2018. In addition, as a candidate state for membership in the European Union, the Public Revenue Office is responsible for exchange of tax information with foreign tax authorities, which contributes to further development of the system of mu-

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tual exchange of information in accordance with EU Regulation 32003R1798. However, this process is ongoing and is to confirm the commitment and image of the country as an equal partner in the EU efforts to combat harmful business practices that are undertaken mainly for tax purposes.

Key words: Tax evasion; Tax avoidance; Tax cooperation; Exchange of tax information.

1. GENERAL CONSIDERATIONS

The relaxed tax policy regarding the profit and income taxation, started over a decade ago in Republic of North Macedonia. The main benefit that was expected from this business-friendly environment was to attract foreign direct investment inflows, which is a prerequisite for economic development as an important condition for EU membership. Consequently, the Government introduced flat income taxation as the main goal was a determination to reduce the tax evasion by improving voluntary tax collection and increasing tax morality and tax culture. In the very first years after the 2008 tax reform, Macedonian tax system realized the desired tax goals. Some major foreign direct investors have established their permanent establishments in the free technological industrial zones. There was evident progress in the taxpayers' behavior by notably increased number of voluntary submitted tax declarations. As a result, the amount of collected tax revenues was greater than ever before. There is no doubt that these optimistic developments had positive impact on Macedonian economic growth and prosperity.

Few years later the perception and the hopes that this competitive tax system could assist to reach long-term economic aspirations have drastically changed. Despite the fact that the country has had one of the most favorable tax regimes in the Europe, Macedonian authorities detected several cases of money transfers to tax heavens, illicit enrichment, profit shifting to more favorable tax jurisdictions, change of residence, and aggressive tax planning activities in order to maximize the income/capital/profit and minimize the taxes paid. This was truly surprising for the Macedonian institutions, tax experts, academia and general public given the circumstances that in that period Republic of North Macedonia had one of the lowest income tax rates of 10%.

These events were a trigger for Macedonian Government to start rethinking the idea behind the tax system. Facing serious fiscal challenges and political pressure, tax authorities have become more aware that the key toward more effective fight against tax evasion and tax avoidance is the collaboration and cooperation among different tax jurisdictions. In terms of globalization, economic openness and overcoming of national borders in performing economic activity, Republic of North Macedonia has realized

that unilateral measures are not enough to protect the tax system and to prevent future potential tax revenue losses.

In order to further harmonize the Macedonian legislation with the EU law and to confirm country’s commitment to be a part of the international efforts to combat tax evasion and tax avoidance, in the following period, Macedonian tax authorities have undertaken many activities toward development and improvement of exchange of tax information system. Although some standards have already existed in relevant tax laws, still, a number of amendments were introduced in line with the obligations from the OECD BEPS Initiative. The main purpose of this paper is to provide an overall review of the mechanisms for exchange of tax information that are available to Macedonian tax authorities. Moreover, the paper will explain the system of exchange of tax information in Republic of North Macedonia, its historical background and the current one. It will also present some aspects of implementation of these standards in practice. The last section will summarize the author’s findings and will give some policy recommendations.

2. INSTRUMENTS FOR EXCHANGE OF TAX INFORMATION IN REPUBLIC OF NORTH MACEDONIA

Republic of North Macedonia is a member of the Council of Europe and the Global Forum on Transparency. Therefore, the country has agreed to accept all OECD standards for exchange of tax information.

2.1. The very first instruments for exchange of tax information in Republic of North Macedonia have been implemented in the bilateral tax treaties for elimination of double taxation on income and capital and prevention of fiscal evasion that are formulated according the OECD Model Tax Convention on Income and on Capital. At the moment, there is a network of 49 double tax treaties. On the other hand, the applicable double tax treaties do not include provision for exchange of information for tax payers’ financial accounts despite of the OECD Model Tax Convention Updates from 2005. According the Macedonian authorities this fact does not imply that the country would not exchange information for financial accounts since there are not any other legal obstacles for this type of exchange of information. However, it is a necessary the other contracting party to agree on this type of exchange of information even there is no domestic interest. If the other contracting country does not agree on reciprocity or does not have any legal interest, the requested information cannot be exchanged.¹

¹ V. Pendovska, A. Maksimovska Stojkova, J. Zafroski, Jovan, E. Neshovska Kjoseva, *Evaluation of Tax Procedural Solutions with Special Accent on Protection of Taxpayers’ Rights in Republic of North Macedonia: Conditions, Problems and Solutions*, Skopje 2020.

In addition, the country has signed 51 bilateral treaties on exchange of tax information, mainly with jurisdictions from Europe and Asia, as well as with the countries from the region such as Bulgaria, Croatia, Italy, Montenegro, Serbia and Slovenia. Most of these treaties provide exchange of tax information in accordance with the international standard, with the exception of the double tax treaties with Austria and Switzerland. In order to further enhance the tax cooperation between the tax administrations, according to the Agreement for Regional Administrative Cooperation from 2006, Republic of North Macedonia has exchanged tax information with Bosnia and Herzegovina, Bulgaria, Serbia and Montenegro.

2.2. The system of exchange of tax information in the Republic of North Macedonia is also established in the Law on Tax Procedure. This modernized Law that entered into force in December 2019 contains a provision for international legal assistance (article 178 on Law on Tax Procedure). According to this provision, the international legal assistance implies the right of the Public Revenue Office (hereinafter PRO) on the basis of international agreements, during the tax procedure to request legal assistance from a foreign tax authority, as well as the obligation of the Public Revenue Office to provide such assistance, if requested. If the international legal assistance is not regulated by an international agreement, it may be provided only in certain circumstances, such as: there is a reciprocity; the receiving State is obligated to use the information and documentation received only for the purposes of tax, misdemeanor or criminal procedure, as well as that they will be available only to persons, administrative bodies, i.e. judicial bodies competent for a certain tax case; the State that request the legal assistance is prepared to undertake actions to eliminate double taxation; the request for legal assistance does not endanger the public order or other important interests of the Republic of North Macedonia, and there is no threat that the provided legal assistance may expose an official or professional secret or may harmed the resident taxpayer on a large scale.

On 23 August 2018, the PRO adopted a new procedure for the international exchange of tax information which regulates the procedure for exchange of information. The new procedure incorporates the organizational changes in the PRO. The newly established Department for International Exchange of Tax Information from the General Tax Inspectorate has become part of the Sector for International Cooperation of the PRO as well as the recommendations of the OECD experts.

2.3. Almost immediately after the accession of the Republic of North Macedonia to the BEPS Inclusive Framework in August 2018, the authorities began with significant tax reforms. The main aim of the reforms was to create a terrain for incorporation of the four minimum standards and other

obligations essential to successfully combat the tax evasion, profit shifting, erosion of the tax base, and other harmful business practices.

The first step in this direction was the amendments to the Law on the Public Revenue Office (January 2019). According to the law's changes, payment operations' carriers have an obligation to report every inflow on the accounts of natural persons to the public revenue office on a regular monthly base. This new legal rule has replaced the previous one that stipulated a reporting obligation to the PRO only upon its request and for a specific taxpayer. This rule was designed and implemented as a proper response of tax authorities in the fight against money laundering and tax evasion. According to this new legal rule, the PRO collects personal and other necessary data from taxpayers, carriers of payment operations, money transfer service providers, competent state authorities, public institutions, international organizations, foreign tax authorities, and domestic and foreign legal entities – payers of income.²

2.4. In recent years, Macedonian tax authorities have undertaken some serious steps toward preventing its tax system from tax evasion, tax avoidance, and harmful business practices carried out only for tax purposes. Thus, as a candidate state for membership in the European Union, the PRO is responsible for exchange of tax information with foreign tax authorities which contributes to further development of the system of mutual exchange of information in accordance with EU Regulation 32003R1798. In addition, the Republic of North Macedonia signed the Multilateral Convention on Mutual Administrative Assistance for Tax Purposes on 27 June 2018 that entered into force in January 2020.

The Convention provides a comprehensive multilateral framework for the exchange of information and assistance in tax collection. Signing the Multilateral Convention on Mutual Administrative Assistance in Taxation and joining the OECD BEPS Initiative, Republic of North Macedonia has once again shown a strong dedication to implement the international standards for exchange of tax information in order to achieve better results in the global combat against tax evasion and evasion and to promote tax transparency.³

In August 2018 Republic of North Macedonia became the 117 BEPS member state. As a member state, until today, Republic of North Macedonia has made progress by introducing the transfer pricing documentation requirements in the Law on Profit Tax, as a minimum standard. However, concerning the Country-by-country report (*BEPS Action 13*), the country is few steps

² Rulebook on the form, content and method of data submission for money inflows to natural persons, *Official Gazette of Republic of North Macedonia*, No. 26/19.

³ A. Maksimovska Stojkova, E. Neshovska Kjoseva, *Mandatory Disclosure Rules: National Report on Republic of North Macedonia*, Wien Institute and IBFD, Amsterdam 2021.

behind compared to the countries from region.⁴ Under the Action 13, all large multinational enterprises have an obligation to prepare country-by-country report with aggregate data on global distribution of income, profit, taxes paid and economic activity among tax jurisdictions where they operate.

As a result, for almost two years Macedonian tax authorities have been working on creating a best legal solution in order to introduce the requirements for filling of CbC report in the domestic tax legislation. This should not be a simple transplantation of this minimum standard into the Macedonian tax regulation. Having in mind the latest OECD recommendations, it should be one broaden legal provisions that would prescribe strict form and content of the CbC reports; would allow report submission via electronic means; would permit third party agents notification and would establish controls to ensure appropriate use of the CbC reports.⁵ All these notification requirements would guarantee more effective implementation of this minimum standard. In addition, Republic of North Macedonia should engage in signing bilateral tax conventions and tax information exchange agreements that would enable proper exchange of CbC reports.

There is no doubt that these legal amendments would strengthen the country’s position and would have significant impact on the international fight against harmful tax practices, base erosion and profit shifting toward more preferable tax systems, exploiting tax gaps and mismatches to avoid paying taxes in the country where the economic activity is performed and the profit is generated.

3. IMPLEMENTATION OF EXCHANGE OF TAX INFORMATION STANDARDS IN PRACTICE

According the *Peer Review Country Reports from the Global Forum on Transparency and Exchange of Information in Tax Purposes*, Republic of North Macedonia has respected and acted in accordance with the international standards for exchange of tax information. The 2014 and 2019 Peer Review Reports noted that “the country has established a network of mechanisms for exchange of tax information that is compliant with the international standard for exchange of information in tax purposes”.

The following Table 1 gives an overview of the process of exchange of tax information in practice in Republic of North Macedonia over the period that was last under review by the OECD (July 1st 2014 to June 31st 2017).

⁴ E. Neshovska Kjoseva, “The OECD Multilateral Instrument: New Momentum in the International Tax Law and Its Impact on the Macedonian Tax Law”, *Iustinianus Primus Law Review* 1/2020.

⁵ *Ibid.*

Table 1 – Exchange of Tax Information on Request in Republic of North Macedonia (July 1st 2014 to June 31st 2017)

Exchange of Information in Tax Purposes on Request	Number of Requests	Type of Requests	
Received requests	31	2 – ownership information 7 – accounting information 7 – banking information and 19 – other type of information (regarding identification, confidentiality and group request)	9 requests for companies, 24 requests for individuals and 2 requests for foundations and other entities
Rejected request	1	The requesting jurisdiction did not provide accurate and adequate information to enable the identification of the subject of the request and was not able to provide further detail after North Macedonia asked for clarification (i.e. no person corresponded to the name, address and data of birth provided).	
Sent requests (Bulgaria, Kosovo, Serbia and Slovenia were main recipient countries)	27	mostly about business relationship	

Source: Global Forum on Transparency and Exchange of Information for Tax Purposes: Republic of North Macedonia 2019 (Second Round) Peer Review Report on the Exchange of Information on Request, page: 13, 45, 46, 74, 88, 89, and 92.

As reported, the received requests for exchange of information for tax purposes are fully dealt with within 90 days. The time necessary to deal with an exchange of tax information request has never exceeded 180 days. These requests are typically related to information already at the disposal of the competent authority or another government agency. Macedonian tax authorities note that most of the requests received are related to individuals and less about business transactions.

According to the number of exchanged information, key partners of Republic of North Macedonia in the process of exchange of tax information are Belgium, Norway, Poland, Sweden, Germany and Slovenia. The communication with the partners, as well as with administrations, is done using a general email account for non-confidential information and by post for confidential information.

The Macedonian PRO exchanges tax information with foreign administrations under the signed bilateral tax treaties and the Multilateral Convention for Mutual Administrative Assistance in Tax Matters.

In the table 2 there is data on exchange of tax information among the Macedonian PRO and foreign tax administrations.

Table 2 – Data on exchange of tax information among the Macedonian PRO and foreign tax administrations

Exchange of tax information	Received			Sent		
	Upon request	Spontaneous	Automatic	Upon request	Spontaneous	Automatic
2016	11	3	4	9	/	/
2017	15	1	4	6	/	/
2018	17	/	1	9	1	/
2019	16	3	1	16	/	/

(Source: ujp.gov.mk, visited in April 2022)

4. FINAL REMARKS

For almost 15 years Macedonian authorities were committed to the idea to create one of the most competitive tax systems in the region of Western Balkan that would enable attracting foreign capital as a precondition for boost of the economic growth and development. While creating and promoting the tax system as friendly and comfortable as possible for doing business, it seems that authorities have overlooked and neglected the problems and the potential revenue losses caused by the phenomenon of the tax avoidance. Surprisingly, despite the 10% income tax rate, the institutions have detected cases of change of residence, reallocation of profits, payments toward more preferable tax system. This is evidence that the relaxed tax policy has many side effects.

However, the EU agenda has put additional pressure on the Republic of North Macedonia. These circumstances drove the country at a crossroad. The dilemma has always been: to continue with one of the most competitive tax policies or to join the international fight against tax evasion, tax avoidance and aggressive tax planning. In light of the tax harmonization with the EU tax legislation, the fiscal and political arguments prevailed, aiming to prevent future loss of potential tax revenues.

What was done in the last 5 years? As the Country’s Report on the Global Forum for Transparency indicated Macedonian legislation is in line with the international standards for exchange of tax information. First steps toward implementing these standards in the Macedonian tax rules were by amending relevant national laws, such as the Law on Public Revenue Office and the Law on Banks, which made space for establishing the mandatory disclosure rules.

Although Macedonian domestic laws allow exchange of tax information, thanks to network of 49 bilateral tax treaties and the procedure introduced by the Law on Tax Procedure, Macedonian tax authorities have proved their determination to be partner in the global fight against tax evasion and tax avoidance. Thus, in 2018 Republic of North Macedonia has become member state on the BEPS Inclusive Framework. Later that year, the Multilateral Convention on mutual administrative assistance for tax purposes was signed. In addition, as a country that continuously works hard to become part of the European Union, the Public Revenue Office is responsible for exchange of tax information with foreign tax authorities, which contributes to further development of the system of mutual exchange of tax information in accordance with the EU regulations. Finally, in January 2020 the Multilateral Instrument was signed.

The standards for exchange of tax information that are by now implemented really function in practice. As reported by the Public Revenue Office, Macedonian tax authorities exchange tax information upon request. There is still no standard for automatic exchange of information. Most of the received requests for exchange of tax information from foreign tax authorities are for natural persons. The requested information is provided within the period of 90 days that only confirms the improvement of efficiency due to the newly established Department in the tax administration responsible for international cooperation. Bulgaria, Kosovo, Serbia and Slovenia are the countries that are commonly involved in the mutual assistance and exchange of tax information procedures with Republic of North Macedonia.

Republic of North Macedonia has a lot to do in the upcoming period in order to achieve more effective combat against tax evasion and tax avoidance on the path toward the EU integration. According the Strategy for reform of the tax system and Government’s declaration, there will be tax law changes in order to implement the BEPS minimum standards in the Macedonian legislation (specifically, BEPS Actions 5, 6, 14 and especially Country-by-country report). At the end, there is a clear need for further development of the Macedonian exchange of tax information system and for more dynamic interventions towards accession in the EU. It is a necessary to take additional measures and activities to improve the expert knowledge and to build up the human and technical capacities for achieving better results in line with the endeavor to cope with all tax harmful practices and cross-border transactions that seriously erode Macedonian tax system and public finances.

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СПРЕЧАВАЊЕ ПОРЕСКЕ ЕВАЗИЈЕ И ИЗБЈЕГАВАЊА ПЛАЋАЊА ПОРЕЗА КРОЗ РАЗМЈЕНУ ПОРЕСКИХ ИНФОРМАЦИЈА – МАКЕДОНСКО ИСКУСТВО НА ПУТУ КА ЕУ ИНТЕГРАЦИЈИ

Сажетак

Од 2007. године, македонске власти посвећене су идеји да за стране директне инвеститоре постану први избор. Поред тога, Република Сјеверна Македонија труди се да одговори на пореску конкуренцију између земаља Западног Балкана. У таквим околностима, свака македонска влада препознала је кључ за привлачење страног капитала у „политици отворених врата“. Пореска конкуренција увела их је још дубље у „трку до дна“. Македонска либерална пореска политика у вези са опорезивањем добити и дохотка схваћена је као предуслов економског развоја као важног услова за чланство у ЕУ. Током многих година, македонски порески систем промовисан је као „што пријатнији и пријатељскији“ за пословање. Власти су превидјеле и занемариле проблеме и могућ губитак пореских прихода. Међутим, ЕУ агенда створила је додатни притисак за Републику Сјеверну Македонију. Ове околности довеле су државу на раскрсницу. Избор је увијек био између: задржавања једне од најконкурентнијих пореских политика, кроз примјену сразмјерне стопе пореза на доходак од 10 % уз бројне пореске олакшице за правна лица, или придруживања међународној борби против пореске евазије, избјегавања плаћања пореза и агресивног пореског планирања. У свјетлу усклађивања опорезивања са прописима ЕУ (и ОЕСД пореским правилима), превагу су однијели фискални и политички разлози, чији циљ је да се спријечи будући губитак могућих пореских прихода. Због тога, Република Сјеверна Македонија потписала је Вишестрану конвенцију о узајамној административној помоћи у пореске сврхе 27. јуна 2018. године. Поред тога, у вези са статусом кандидата за чланство у Европској унији, Управа јавних

прихода одговорна је за размјену пореских информација са страним пореским органима, што доприноси будућем развоју система узајамне размјене информација у складу са Уредбом ЕУ 32003R1798. Ипак, овај процес траје и треба да потврди посвећеност и углед земље као једнаког партнера у напорима ЕУ да се избори са штетним пословним праксама предузетим углавном из пореских разлога.

Кључне ријечи: *Пореска евазија; Избјегавање плаћања пореза; Пореска сарадња; Размјена информација.*