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TRANSFER PRICES IMPLICATION UPON TAX SYSTEM. THE ROMANIAN EXPERIENCE

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Abstract: Transfer prices are a top field in financial and legal scientific research and practical activity. Although this research field is still in the beginning, due to its complexity, as well as it's inter-, multi- and transdisciplinarity, it can be noted that empirical studies, as well as practical researches in economic and legal matters, have intensified. Moreover, this field of transfer prices is in close connection with the area of international double taxation, which shows its international character. In this article we sought a holistic approach to the transfer price phenomenon, dealing with economic and legal technical aspects that we believed are important to emphasise. Without addressing the issue of transfer prices in an exhaustive manner, in this article we presented both the legal and the economic framework of transfer prices in Romania. The added value of this article lies in the approach to transfer prices, both legally and economically.
Keywords: *transfer prices, double taxation, tax system, affiliates, transactions.*

1. Introduction

The first scientific studies were conducted in the 1940s by the US academia. These studies dealt with the prices of goods and services that are sold / transferred between different divisions of the same company, in order to reflect their economic performances. The US Government introduced specific legislation at the end of the 1960s. However, this was not a hot zone for the IRS until the 1980s. Moreover, it can be noted that around 1996 the concept of transfer prices was found in such countries as: Japan, Italy, New Zealand, Mexico, South Korea, France, Czech Republic, Spain, Australia, South Africa, and the USA. Through 1997 and 1998 the concept and domain of transfer prices saw a boost in countries like China, Slovakia, Brazil, Japan, Italy, New Zealand, Mexico, South Korea, France, Czech Republic, Spain, Australia, South Africa, and the USA. During 1999 – 2000 the concept of transfer prices was expanded to the following countries: Germany, Kazakhstan, Russia, Denmark, Belgium, Venezuela, Argentina, Canada, United

Kingdom, China, Slovakia, Brazil, Japan, Italy, New Zealand, Mexico, South Korea, France, Czech Republic, Spain, Australia, South Africa, and the USA.

The evolution of the concept and domain of transfer prices over time took a considerable impetus in 2001 – 2002 in the following countries: Thailand, Portugal, Poland, Peru, India, Netherlands, Germany, Kazakhstan, Russia, Denmark, Belgium, Venezuela, Argentina, Canada, United Kingdom, China, Slovakia, Brazil, Japan, Italy, New Zealand, Mexico, South Korea, France, Czech Republic, Spain, Australia, South Africa, and the USA. The last period in which the concept and the foundation of transfer prices was addressed with enthusiasm in science and practice was 2003 – 2004, a fact which was ascertained in the following countries: Romania, Colombia, Malaysia, Thailand, Portugal, Poland, Peru, India, Netherlands, Germany, Kazakhstan, Russia, Denmark, Belgium, Venezuela, Argentina, Canada, United Kingdom, China, Slovakia, Brazil, Japan, Italy, New Zealand, Mexico, South Korea, France, Czech Republic, Spain, Australia, South Africa, and the USA. As regards the technical framework of the history of transfer prices, we can see that in 1973 there was a first work meeting of OECD. In 1979 the first guidelines on transfer prices was drafted, which would be useful in practice to clarify the various problems emerged in the framework of legal and economic transactions. In 1984 the first report was drafted on transfer prices which targeted the area of production and services, for the purpose of providing an overview on the applicability of this concept. The taskforce for transfer prices within OECD organized a working meeting in 1993 to debate the main issues faced by businesses. These meetings sought to establish the first guidelines on transfer prices in 1995, which were considerably improved in 2010, when OECD published the new Transfer Pricing Guidelines, the first ones dating from 1979.

The guidelines drafted by OECD were based on three documents from international tax legislation:

- The Framework Convention for the Avoidance of Double Taxation.
- The code of conduct on transfer pricing.
- Transfer Pricing Guide for Multinational Enterprises and Tax Administrations.

The guidelines drafted by the OECD in 2010 are based around two main goals: the first is to *diminish the conflict between tax administration and multinational societies,* and the second is to devise *internal rules and regulations in line with the OECD guidelines.*

With regard to the dual objectives that the OECD Guidelines outline, the following can be noted: *avoiding double taxation* and *ensuring the appropriate tax base* for each party involved. However, what are the advantages of these Guidelines? We consider two important aspects to this question: *encouraging international harmonisation and cooperation*, and *diminishing the conflict between tax*

authorities. Regarding the benefits and objectives of the OECD Guidelines, we can argue that it addresses general areas such as the administrative approach to avoiding and resolving disputes, APA instructions (advance pricing agreements), and appropriate adjustments; documentation, where special attention is needed on intangible assets, intra - group services and cost - sharing arrangements. However, the question remains: what are transfer prices? According to the OECD, "transfer prices are prices at which an enterprise transfers physical, intangible assets or supplies services to associated enterprises". But what are associated enterprises? According to the OECD, these are "two enterprises which participate directly or indirectly in the management, control or capital of each other", or where "the same person participates directly or indirectly in the management, control or capital of both enterprises (i.e. where both enterprises are jointly controlled)".

The market price principle in itself represents "third-party prices". However, we ask ourselves what is the market price range? According to the OECD, it is "a range of values that are acceptable to determine whether the terms of a transaction between affiliated parties comply with the market price principle and derive either from applying the same pricing method to multiple comparable data, or from applying different methods on the fixing of transfer prices ". According to Article 9 of the OECD Transfer Pricing Guidelines, the principle of market price for associated enterprises can be defined as follows: "[where] two [associated] enterprises agree or impose conditions on their financial relations, which differ from those which would have been agreed between independent enterprises, then any profits which would have accrued to one of the enterprises, if those conditions had not existed, but which, owing to those conditions, did not accrue in that way, may be included in the profits of that enterprise, and may be taxed accordingly".

The Transfer Pricing Guidelines drafted by the OECD in the July 2010 version includes the following essential parts:

- Chapter I: Market price principle
- Chapter II: Methods of setting transfer pricing
- Chapter III: Comparability analysis
- Chapter IV: Administrative approaches
- Chapter V: Documentation
- Chapter VI: Intangible assets
- Chapter VII: Intra - group services
- Chapter VIII: Cost-sharing arrangements.
- Chapter IX: Transfer pricing aspects in business restructuring

At the international level, the BEPS (Base Erosion and Profit Shifting) project is notable. The project contains 15 actions, representing 15 regulatory areas that allow states to monitor data impacting on the profit tax base of that jurisdiction.

The BEPS project was adopted by the OECD and the G20 countries in 2013, subsequently issuing the following reports to guide states in the implementation of Action 13. In September 2014, the Report on Transfer Pricing Documentation and CbC Reporting was issued, followed in June 2015 Action 13: Reporting implementation package: Country - by - Country. October 2015 marks the development of Country Transfer Pricing Documentation and Country-by-Country Reporting. Action 13 of the BEPS Project, which basically replaces Chapter V of the OECD Transfer Pricing Guidelines, was a revision of transfer pricing documentation rules.

Also noteworthy is the transfer pricing documentation and Country - by - Country reporting. This documentation includes three major sections:

- The first component: "Master File", or the group dossier, contains information about the group structure, its activities and strategy, as well as how the transfer pricing policy has been implemented at its level.
- The second component: "Local File", or the company file, which keeps track of the transactions and activities carried out by the local entity.
- The third component: "Country by Country Reporting (CbCR)", which includes information on the group's earnings in each jurisdiction, the level of revenue which the group obtains in each jurisdiction in dealings with affiliates, on the one hand, and transactions with independent persons, on the other hand, the profit or loss, and the taxable profit paid in each jurisdiction, the number of employees, the ownership of the capital, who owns the tangible and intangible assets.

As regards the implementation of this strategy in national legislation, the countries where the CbCR has been successfully implemented in national legislation, with effect from 01.01.2016, were Australia, Denmark, France, Ireland, Italy, Mexico, the Netherlands, Poland, and Spain, and the countries where CbCR is currently being implemented in national legislation (legislative drafts under debate) are: China, Finland, Japan, Norway, the United Kingdom and the USA. Under the OECD provisions, the report will be drawn up by multinational groups with a consolidated turnover of more than EUR 750 million or the equivalent in local currency in the year before the reporting year. Thus, in Finland, France, Ireland, Italy, the Netherlands, Poland, and Spain, the legislative provisions were aligned with the OECD provisions, i.e. a minimum of 750 million euro consolidated turnover. In the other countries, such as Australia, China, Denmark, Japan, Mexico, Norway, the United Kingdom, and the US, the ceiling was set between EUR 670 million and EUR 850 million. As regards the submission of the CbCR report, we can see that the OECD recommends that reporting be made for fiscal years starting on or after January 1, 2016, the reporting period being 12 months after the fiscal year; the first CbCR reports must be submitted until December 31, 2017 in

countries like Australia, Denmark, France, Ireland, Italy, Mexico, the Netherlands, Poland, Spain, and the United Kingdom. In the other countries, the provisions are slightly different (implementation is ongoing in these countries), as follows: in China, the report will be submitted with the tax return (31 May), in Finland it will be submitted from 2017, in Japan it will be filed starting with the fiscal year following 1 April 2016, in Norway the first reporting will be made in 2018 and will be for 2016 and, and in the US the first reporting will be for the first fiscal year following the adoption of the legislation.

Regarding the secondary reporting mechanism, according to the OECD provisions, the report is submitted by the parent company of the group of companies. If a jurisdiction does not transmit the information to another jurisdiction that meets the conditions for obtaining and using the report (confidentiality, consistency, appropriate use) because:

- the CbCR report was not requested from the parent company;
- no commitment to exchange CbCR reports with a competent authority was agreed in due time, under international agreements of that jurisdiction for the exchange of CbCR reports;
- it was established that in practice there was no exchange of information with jurisdiction, although there was such an understanding;

a secondary mechanism will be accepted by reporting at the local level or by removing the obligation to file CbCR reports and transfer the information to another company in the group.

Certain countries such as Australia, Denmark, France, Ireland, Japan, Mexico, the Netherlands, and Norway have adopted the OECD recommendations on the secondary mechanism into national legislation. Legislation in China, Finland, Italy, and Spain provides for secondary reporting at local level, legislation in Poland and the US does not provide for a secondary mechanism, and in the UK under the secondary mechanism voluntary reporting is foreseen at the local level.

In this article, we sought to address the issue of transfer pricing, starting from its historical analysis and continuing with the evolution of its concept and economic and legal dimension. In my opinion, in this article, the question of transfer pricing has been approached, mutatis mutandis, both in terms of its legal dimension, addressing legal and legislative issues at national and international level, as well as of its economic dimension, as the article presents the main economic models and spending patterns. In conclusion, we consider that the added value of this article was the effective symbiosis we made in presenting and analyzing the economic and legal dimension of transfer prices, and in capturing the experience that Romania has acquired in this complex and exciting field.

2. Literature review

Transfer pricing is an area that is at an early stage of scientific research, both in Romania and at an international level. This issue has received increased attention in recent years, which shows an increasing importance, both in the academic environment and in the practical environment, to discuss the issue and to have as many examples and as much jurisprudence as possible in this complex field. A first comprehensive study on transfer pricing was conducted by Bakker & Obuoforido (2009). In this extensive study, the authors present the OECD transfer pricing framework, the personalized assessment model, both at national and international level, and in the second part of the study, the study of countries like : Australia, Brazil, Canada, China, France, India, Japan, Mexico, the Netherlands, South Africa, the United Kingdom, and the United States.

Bakker (2009) continues this extensive study with another study on transfer pricing and business restructuring. In this study, the author presents the business models in the introductory part of the paper, analyzing both the OECD framework and the transfer pricing policy framework at EU level, and similarly to the study presented above, in the second part of the paper the author presents some large case studies of countries such as China, Germany, India, Switzerland, the United Kingdom, and the USA.

Another interesting study is the one conducted by Lagarden (2014), in which the author analyses the main features of transfer pricing, as well as the consequences they generate on a company's business. Within this article, Lagarden (2014) discusses issues such as: ownership concepts, practical valuation methods and challenges attached to them, as well as different interpretations of tax authorities in different countries.

Koomen (2015) discusses the issue of transfer pricing through an analysis of the BEPS Project arm's length. In this respect, the author carries out in this study both a historical and comparative analysis on the implementation of the arm's length principle, as well as the various challenges faced by its implementation in practice. Moreover, in order to meet the expectations of the practical environment, the author presents various cases and case studies relevant to the jurisprudence of several countries.

In a comprehensive study, Bilaney (2014) takes a close look at various business models within the logistics sector, focusing closely on issues such as the arguments and circumstances underlying the adoption of one model or another. Moreover, the author considers the importance of plausible transfer pricing methodologies that need to be used in different models.

Other authors, such as Rossing & Pearson (2014), discuss transfer pricing systems, which, according to the authors, have been neglected in transfer pricing theory and literature on risk management. In this study, the authors introduce some interesting

concepts such as knowledge-based management systems that are followed by the individual components of the integrated transfer pricing management system. Moreover, in the final part of the article, the authors present and propose a framework for transfer pricing management.

Another particularly interesting article is the one developed by Glahe (2013). In this study, the author carries out a comprehensive analysis of the link between national rules on transfer pricing and fundamental rights and freedoms at EU level. The author demonstrates in this article that the violation of national rules on transfer prices by the arm's length principle must have strong arguments. The conclusion that emerges from this study highlights the fact that the necessary fiscal cohesion at EU level can be the underlying reason behind the adjustments made under the auspices of the arm's length principle.

Brauner (2012) wrote an interesting study on basic transfer pricing rules. Therefore, the author points out the imminent need for a reform of transfer pricing rules, even if this is not a comprehensive reform of the international tax regime. The author outlines the validity of the need to modify the transfer pricing rules in the context of a much more comprehensive reform of the rules on business income taxation, in the wider context of the reform of transfer pricing rules.

An interesting study is that of Sim (2013), in which the author discusses the issue of transfer pricing in financial services. According to the author's analysis, certain audited financial service elements on transfer pricing rules may include certain types of expenses, such as those arising from auditing, different service contract costs, investment management payments, and initial service fees.

Gouthiere (2015) looks at the various recent changes to transfer pricing, including the new reporting obligations introduced to provide clearer and more efficient information to tax authorities and to facilitate different audits of transfer pricing. In the article, the author highlights several recent cases that indicate that the French courts are very "sensitive" and "attentive" to the theoretical and practical complexity of the aids provided by tax administrations.

3. General economic models and allocation of expenses

With regard to general economic models, we can identify the following types:

- Manufacturer under subcontracting;
- Manufacturer on/by order;
- Manufacturer with full functions and risks;
- Distributor;
- Salesperson;
- Service center.

Concerning the general economic models, we can identify two suggestive figures: Figure 1, in which *the general model for the value chain* is presented and analyzed,

and where it can be seen that the model is customised for the production activity; and Figure 2, which presents in a brief manner *remuneration according to the economic model in which the model is customised for the distribution activity.*

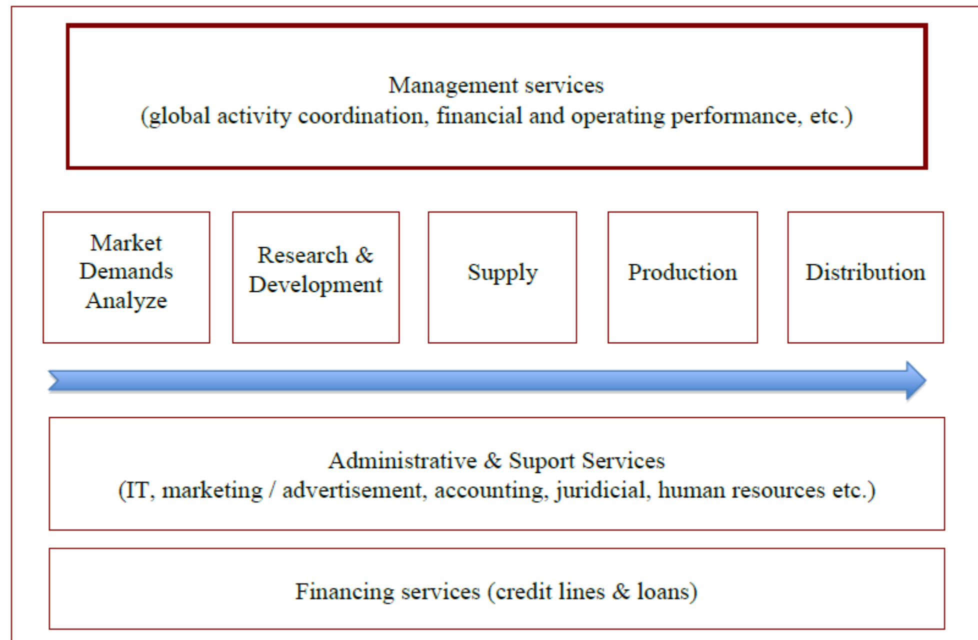

Figure 1 General Model for Value Chain
Source: A.N.A.F.

As regards the subcontracting model called *plastic toll manufacturing*, it has the following main characteristics:

- Raw materials, materials, and any technical specifications belong to the company that orders the products.
- It has no power of decision in the economic process.
- The remuneration should be based on total operating expenses, plus a profit margin.

The main function of the subcontracting model is the processing of raw materials and materials, in which there are associated risks such as the quality of the products delivered to the beneficiary and the currency exchange, and holding the following assets: machinery, equipment, and buildings.
The manufacturer by/on order model has the following main features:

- The manufacturer supplies himself with raw materials and necessary materials.
- Any technical specifications belong to the company that orders the products.
- In the economic process, he can choose suppliers of raw materials and materials.
- The remuneration should be based on total operating expenses, plus a profit margin.

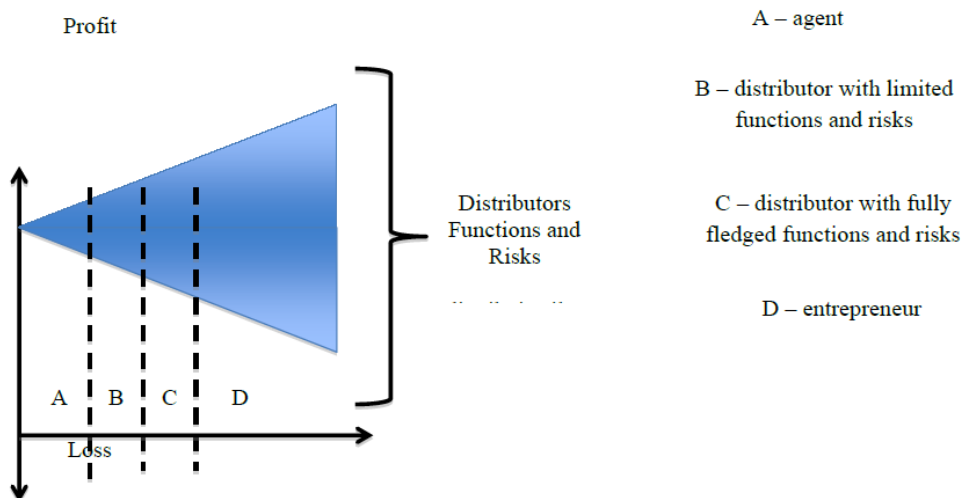

Figure 2 Remuneration according to economic model
Source: A.N.A.F.

Within this type of model, the main functions are: processing of raw materials and materials, as well as supply of raw materials and materials, with associated risks related to the quality of the products delivered to the beneficiary and the currency exchange, and as assets: machinery and equipment, buildings, and sometimes specialists in the production process.
The manufacturer with full functions and risks model has the following main features:

- The manufacturer chooses suppliers and customers himself.
- Technical specifications belong to the company itself or fees are paid for them.
- Remuneration is the profit margin obtained from the sale of products by customers.

The role of producer may be substituted by an “entrepreneur” who subcontracts the production process to a subcontractor.
This type of model has:

a) Main functions:
   i. carries out the research and development process;
   ii. deals with supply with raw materials and materials;
   iii. manufactures and stores products;
   iv. advertises for own trademarks and products.
b) The main risks
   i. quality of delivered products and obsolescence;
   ii. market fluctuations (inventory / stock risk);
   iii. currency exchange (if supply, manufacture and sale take place in different currencies).
c) Main assets:
   i. machinery, equipment, buildings;
   ii. intellectual property (trademarks, patents, technical / technological knowledge);
   iii. own specialists (in various fields: supply, production, research - development, marketing).

With regard to the salesperson model, we can see the following main features:

- Finds customers for a manufacturer, distributor or wholesaler.
- Should not own/lease significant storage space.
- Remuneration may be based on a sales commission or a margin applied to operating expenses.
- The sales price is set within the limits indicated by the service recipient.

The model of this type has the primary function of identifying buyers for products, as risks: currency exchange and, if necessary, non-fulfilment of the sales plan established with the beneficiary of services, and as main assets: experienced employees and generally the premises are leased and no specialised equipment is involved.

The distributor model is a complex one that incorporates the following main features:

- Takes finished products from the manufacturer and sells them to other resellers or wholesalers.
- Carries out marketing/advertising activities.
- Can own/rent storage space or have a storage contract with the manufacturer.
- The transport of products may be subcontracted.
- Remuneration is the profit margin obtained from the sale of products by customers (negotiates the price to customers according to their own commercial strategy).

This model has:

- Main functions:

a. identifying buyers for products;
b. advertising campaigns;
c. sometimes storage of products.
- Main risks:
a. currency exchange;
b. market fluctuations;
c. (physical or moral) deterioration of stored products.
- Main assets:
a. employees with experience in sales and advertising;
b. in general, storage space and means of transport for distribution of products;
c. generally, he does not own his own marks or other intangible assets, with the exception of software licenses purchased from third parties.

The service center model has the following main features:

- Provides services for the benefit of affiliated parties upon request.
- In general, it does not provide services to third parties, and affiliated parties do not benefit from similar third-party services.
- The remuneration should be based on total operating expenses, plus a profit margin.
- Normally, they should not record operating losses, except for the start-up period and subsequent investments.

With regard to this type of model, it has the main function of providing the services requested by the affiliated parties, according to their requirements, having as the main risk the quality and availability of services, and as main assets: office space (which can be rented), as well as equipments, experienced employees, and software licenses.

Regarding the generic pay issues, we can say that remuneration in general:

- is expressed as a margin applied to operating costs or as a percentage of turnover, namely operating income;
- is based on an estimated annual budget, through monthly or quarterly payments;
- entails a settlement after the end of the financial period, meaning that an invoice is issued or credit is granted for the difference.

The allocation of expenditure is required for expenditure incurred with third parties or affiliated subcontractors, as well as for expenses incurred in a multi-beneficiary transaction, where a margin can also be applied. Cost allocation is made directly or indirectly, depending on the number of beneficiaries and the possibility of spending.

The allocation of expenditure is provided for in the legislation of Romania and O.M.F.P. no. 1826/2003 for the approval of the Specifications concerning some

measures regarding the organisation and management of management accounting. In the case of administration and management services provided within a group, the provisions of point 41 of the Norms for the application of the Fiscal Code (point 5 paragraph (13) of the Norms for the application of the new Fiscal Code) should be taken into account.

The direct allocation of expenditure is possible only if there is only one beneficiary and the expenditure to be allocated can be separated. There are two examples in this case:

- the project carried out for a single beneficiary, where staff is allocated only for that project, per unitary time units, without the need for division of time spent in the project.
- expenses incurred by third parties or subcontractors, such as: transport, accommodation, service costs, and which may be allocated or re-billed to only one beneficiary.

The indirect allocation of expenditure is necessary if there are several beneficiaries and/or the expenditure in question cannot be separated. It is based on an allocation key. There are also the following examples:

- the project developed for several beneficiaries;
- staff involved in several projects at the same time, it being necessary to divide the registered working time;
- costs incurred by third parties or subcontractors (transport, accommodation, services) for a multi-beneficiary project.

The allocation key must have economic logic/reasoning in relation to the activity for which the expenditure is allocated. As examples, in this case we can notice:

- the number of employees for staff-related services;
- the turnover (sales revenue) for marketing services;
- the number of man hours for design services.

The margin applied to costs applies to own costs, and not to the value of invoices of third parties or affiliated subcontractors invoiced to the beneficiaries, and should be increased according to the complexity of the performed activity/functions, and the risks assumed. Assets influence margin only to the extent that their value or rarity (uniqueness) is high. Furthermore, it may not be necessary if the activity for which the expenditure is recorded does not involve significant resources in terms of time or number of people.

Intra-group services with low added value are a notion introduced by the E.U. Joint Transfer Pricing Forum (representatives of EU businesses) in 2010, where the margins encountered in most cases range from 3% to 10%, most often being 5% depending on the circumstances.

It has been introduced in certain EU countries, but its application is limited depending on the value and the amount of services in the provider's turnover and in the beneficiary's operating expenses. It should be noted that this notion has not been introduced in Romania.
As far as R & D projects are concerned, allocation keys are also used to allocate the amounts registered by the company or companies that carry out the activity itself and between project beneficiaries, if not all will receive the same benefits at the end. For analysing royalty payments, there is generally a comparative analysis study to identify similar contracts/similar intellectual property when there are no comparable internal ones.

4. Transfer pricing framework in Romania

As regards the transfer pricing field in Romania, the relevant legislation is composed of the following normative acts:

- Art. 11 of the Law no. 227/2015 regarding the Tax Code – renegotiating a transaction.
- Art. 7 of the Law no. 227/2015 regarding the Tax Code – affiliates.
- Art. 406 of the Civil Code – degree of kinship.
- Art. 52 of Law no. 207/2015 regarding the Tax Procedure Code – SFIA and APA.
- Art. 108 para. (2) of the Law no. 207/2015 regarding the Fiscal Procedure Code – taxpayers' obligation to have the transfer pricing file present.
- Art. 336 para. (1) let. E) of Law no. 207/2015 on the Fiscal Procedure Code – sanctioning.
- Order 3735/2015 – APA.
- Order 3736/2015.
- O.P.A.N.A.F. 222/2008 – the content of the transfer price file (incident in the case of actions initiated before 01.01.2016).
- O.P.A.N.A.F. 442/2016 – on the amount of transactions, the deadlines for drawing up, the content and conditions for requesting the transfer pricing file and the transfer pricing adjustment/estimation procedure (incident in the case of actions initiated after 01.01.2016).
- Art. 93 (1) and 93 (2) of the G.D. no. 92/2003 on the Fiscal Procedure Code – amicable procedure (incidents in the case of actions initiated before 01.01.2016).
- Art. 282 and 283 of Law no. 207/2015 on the Fiscal Procedure Code – amicable procedure (incidents in the case of actions initiated after 01.01.2016).

Art. 11 para. (2) Law no. 571/2013 on the Tax Code, in force until 31.12.2014, regulates the transfer pricing framework. Art. 11 para. (4) of Law no. 227/2015

regarding the Fiscal Code: "the transactions between affiliated persons are carried out according to the market value principle. In a transaction of a group of transactions between affiliated persons, the tax authorities may adjust, if the market value principle is not respected, or can estimate, if the taxpayer does not provide the competent tax authority with the necessary data to determine whether the transfer prices in the analysed situation are in line with the market value principle, the amount of income or expense related to the tax outcome of any of the related parties based on the level of the central market trend ... When establishing the market value of the transactions between related parties The most appropriate method of the following [...] (in force since 01.01.2016) is use".

Law no. 227/2015 regarding the Fiscal Code: art. 7, para. (1) designates the term "affiliated persons" as that person, if its relationship with another person is defined as at least one of the following:

a. a natural person is affiliated with another individual if they are a spouse or relatives up to the third degree inclusive.
b. a natural person is affiliated with a legal person if the natural person owns, directly or indirectly, the holdings of the affiliated persons, at least 25% of the value /number of units or voting rights held by the legal person, or if they control the legal person.
c. a legal person is affiliated with another legal person if it owns, directly or indirectly, the holdings of affiliated persons, at least 25% of the value/number of units, or voting rights in the other legal entity, or if it effectively controls that legal person.
d. a legal person is affiliated with another legal person if a person holds, directly or indirectly, the holdings of affiliated persons, at least 25% of the value /number of units, or voting rights in the other legal person, or if it effectively controls that legal person.

Among affiliated persons, the price at which the tangible or intangible assets are transferred or services are provided is a transfer price.

Regarding art. 52 para. (1), the anticipated individual tax solution is the administrative act issued by the National Agency for Fiscal Administration in order to solve a taxpayer's request regarding the regulation of certain future tax situations. The future tax situation is valuated according to the date of application.

Article 52 para. (2) claims that the advance price agreement is the administrative act issued by the National Agency for Fiscal Administration in order to resolve a taxpayer's request regarding the conditions and modalities in which transfer prices are to be determined during a fixed period, in the case of transactions between affiliated persons, as defined in the Fiscal Code. Future transactions subject to the advance pricing agreement are valuated on the basis of the date of submission of the application.

Art. 108, para. 2 of the Law no. 207/2015 on the Fiscal Procedure Code, concerns the taxpayers' obligation to submit the transfer pricing file. According to para. (2): In order to document compliance with the market value principle, the taxpayer/payer carrying out transactions with affiliated persons is required to prepare the transfer pricing file. At the request of the central fiscal body, the taxpayer/payer is required to submit the transfer pricing file. The amount of the transactions for which the taxpayer/payer has the obligation to prepare the transfer pricing file, the deadlines for its preparation, the content of the transfer pricing file, as well as the conditions under which it is requested, shall be tested by order of the President of ANAF.

According to art. 336, para. 1, let. E) of the Fiscal Procedure Code, the following acts are contraventions: non-compliance by the taxpayer/payer with the obligation to prepare the transfer pricing file under the terms and conditions stipulated by the ANAF President, as well as non-compliance by the taxpayer/payer of the obligation to submit the transfer price file at the request of the central fiscal body, under the conditions of art. 108, para. (2).

O.P.A.N.A.F. no. 442/2016 on the amount of transactions, the deadlines for drawing up, the content and conditions for requesting the transfer pricing file, and the procedure for adjusting/estimating transfer prices, contain the following documents:

- the procedure;
- the annex regarding the application model in the case of a tax inspection;
- the annex regarding the application form for the file, other than a fiscal inspection, based on art. 58 and 64 of Law no. 207/2015 on the Fiscal Procedure Code;
- the annex regarding the content of the transfer pricing file.

Law no. 227/2015 regarding the Fiscal Code, art. 11, para. 4, let. f) specifies that: [...] any other method recognised in the Transfer Pricing Guidelines issued by the Organisation for Economic Cooperation and Development for multinational companies and tax administrations, as subsequently amended.

The implementing rules of art. 11, para. 4 of the Fiscal Code stipulates that: in the application of the provisions of art. 11, para. (4) of the Fiscal Code, the most appropriate method of any other method recognised in the Transfer Pricing Guidelines issued by the Organisation for Economic Cooperation and Development for multinationals and tax administrations, as subsequently amended.

5. Conclusions

Efforts in recent decades to change the legislative framework in order to eliminate double taxation in cross-border transactions have also led to double taxation. The effective elimination of double taxation presupposes, first of all, the elimination of

double non-taxation, the BEPS project presupposing coordinated action by the States, this approach being considered more effective than unilateral action.
A consistent implementation and effective monitoring of the implementation of the CbCR report is needed, since the time remaining until the review phase of 2020 is short. It is also necessary for developing countries to understand that data should be collected in the same format for all countries. Developing countries do not want the BEPS project to be imposed on them, but they should understand that it is absolutely necessary. The BEPS project brought the countries together and changed the attitude of all (tax authorities, consultancy firms, multinational companies), the OECD – BEPS project being already seen as successful.
The three components of the transfer pricing documentation (CbCR, Master File, Local File) are linked to each other, and all three are needed in order to have a complete picture and understanding of the situation, allowing the tax authorities to see the other party of the transaction correctly.
The CbC report is a source of statistical information that becomes a tool for monitoring the profile of the company being analysed to determine the degree of risk that affiliated entities carry out in terms of transfer pricing.
As stated in Action 13, the information contained in the CbCR will not provide clear evidence that transfer prices are not at market value, so adjustments to transfer prices can not only be made on the basis of CbCR. The first exchange of information on CbCR will take place in 2018 and will include data for 2016.
A review of reporting is foreseen by no later than the end of 2020 – including the consolidated turnover ceiling for reporting MNEs, the CbCR data, etc.
It is important to develop an OECD user guide for CbC reporting, with a focus on training for data interpretation. Automatic information exchange will strictly target the CbC report.
The conclusions drawn from this article would point out that the whole transfer pricing framework at both national and international levels requires considerable improvements. The complex challenges faced by both tax administrations, taxpayers and economic and legal practitioners entail the need for holistic approaches by all actors involved to find viable solutions to improve transfer pricing rules, both at the national level of the countries concerned, as well as at the level of the international framework, namely at European Union level.

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