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DOUBLE TAXATION CONVENTIONS, TRANSFER PRICING AND FISCAL SPACE. FROM TAX LAW UNDERPINNINGS TO FINANCIAL ASSESSMENTS

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Abstract: This article tackles the sensible and complex problem of international taxation. The main objective of the paper is to create a comprehensive fiscal space, especially at the European level, in the direct taxation domain. The main scope of the research is to identify, evaluate, and assess the main pillars and features of this fiscal space. The research methodology is based both on theoretical analysis of double taxation and transfer pricing issues, but also on practical aspects of several specific case laws. The conclusions of the article highlight the further improvement and development of the arm's length principle structure, improving double taxation multilateral conventions, recalibrating the mutual agreement procedure, and strengthening the tax authorities' international cooperation techniques and tactics.

Keywords: Tax treaties; arm's length principle; taxation; aggressive tax planning; fiscal space.

1. Introduction

The area of taxation represents a *quid pro quo* of fiscality both at national and international levels. The government's sovereignty is still fulfilled by its own tax and fiscal policies enacted at the national levels. The tax codes and tax procedure codes are the main instruments of government to lay down the fiscal policy and the national level. However, due to globalization, the interconnectivity of law systems especially the fiscal ones, the changing nature of the complex financial instruments, and the

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new cutting–edge technologies in the IT and financial sector led to the reorganization of the fiscal system worldwide.

The double taxation problem still remains both at economic and judicial levels, because of the complex mechanisms of the Multinational Companies' (MNCs) structure and developments and the profit shifting problem from the jurisdictions with high taxation rates to the jurisdictions with lower inflation rates. In this context tax evasion and tax fraud are often used throughout several complex aggressive planning strategies well developed by some international specialists.

The transfer pricing issue is especially for those who regard the arm's length principle, intangible assets, and mother company–affiliated company transactions, which still provide interesting insights due to the complex manifestation of transactions provided by companies at the international level.

The fiscal space territory, especially at the European level generates also challenges in terms of the mix between fiscal policy, monetary policy, and social policy. Although in the indirect taxation domain, the European Union has made important steps in this direction, there is still room in the direct taxation agenda – *to maneuver* in terms of complex mechanisms and comprehensive taxation methods.

This article tackles the complex problem of the interconnectivity between the double taxation agenda, transfer pricing policy, and fiscal at the European and international levels. Although several important mechanisms were instituted like the BEPS Project, CCCTB, and DAC directives regarding fiscal transparency, we consider that there is still a necessity for rearranging the fiscal policy, both from the judicial perspective and a financial one. This is the main added value of the paper which analyzed the possibilities of a clear, transparent, and comprehensive fiscal space with complex but efficient mechanisms at international levels.

The research methods used in this article are the historical method, analytical method, sociological method, teleological method, and graphical method to ensure and provide a qualitative overview regarding the main antecedents and consequences of the taxation system.

The structure of this article is the following: the first section there are establishes the main objective and purpose of the research in light of the new judicial and economic challenges ahead; the second section presents the current state-of-the-art by highlighting some interesting studies in the academic field. The third section presents fiscal space mechanism features in the context of double taxation and transfer pricing; section four analyzes three important practical case studies from Romanian jurisprudence; the last section concludes and gives policy recommendations.

2. Literature review

The judicial and financial literature regarding international taxation, *lato sensu,* double taxation, and transfer prices, *stricto sensu,* have gained, lately several interesting insights and debates towards the need for a comprehensive fiscal space, a the European level and also at the international level.

Orow (2005) analyzes the primary objective of double taxation conventions, directly focusing on reducing tax evasion and tax avoidance. The author concludes that tax treaties are long due to the long horizon needed for negotiation, ratification, and harmonization with domestic law.

Dumiter & Jimon (2016a) provide a quantitative analysis of the tax treaties network in Central and Eastern Europe with a direct impact on constructing a fiscal space and a common fiscal area. Dumiter & Jimon (2016b) make a comprehensive study regarding the double taxation conventions concluded by Romania and their impact on fiscal space in the European Union. In the aftermath, Dumiter et al. (2017) reveal a practical case study of the Romanian taxation systems concluding that there are differentials between the stipulation of the law and the application of these provisions in practice. Dumiter (2023) developed a comprehensive technique that connects double taxation conventions, tax compliance, and tax evasion and concludes that complex features bind the legal aspects with the financial and economic ones.

The importance of the multilateral instruments for taxation, especially regarding Art. 2(2) of the multilateral convention (MLI) was tackled by Manzi (2020); the author concluded that the MLI convention, especially Art. 2.2 must be analyzed with other relevant double taxation agreements in the context of the BEPS project and the OECD convention model.

Other authors as Lang (2021) take a step further and analyze the legal implication of double taxation conventions in the light of the UN Model and OECD Model and also the recommendation from the Base Erosion and Profit Shifting Project (BEPS) covering many sensible issues in international taxation area. Connected with this study was the interesting analysis of the historical evolution of tax treaties and conventions in light of several countries' best practices and fiscal treatments (Lang & Reimer, 2021). As the European and international taxation problems have increased in complexity, it was needed a comprehensive study to evaluate and assess the complex implications of the multilateral convention (Kofler et al., 2021).

Organization for Economic Cooperation and Development (OECD) (2024) developed an interesting guide towards taxes on income and capital clarifying the scope and purpose, legal enactments, special provisions, and double imposition elimination by using several methods.

Transfer pricing issues were analyzed by several authors in the academic community. Gupta (2012) for the case of India, developed a study in order to evaluate and assess the transfer pricing issues. The author studies transfer pricing manipulations, the tax burden of companies, and worldwide tax and concludes that by using several economic techniques it is needed tax authorities to reduce corporate tax and tariff rates, and consequently increase the tax base. Pendse (2012) searched for a way to find the objectives and incentives of the Multinational Companies' (MNCs) transfer pricing strategy and concluded that beyond tax liability management there are also objectives regarding the funds' movement to different locations where there used non-arms length principle. Moreover, Seppala et al. (2014) analyze a case study regarding supply chains and transfer pricing issues in a multinational company by using a single source of data for the income level.

Trang (2016) reviews the academic and practical literature regarding the rules for transfer pricing in Vietnam by focusing directly on practical accountant techniques for management advanced systems. Barker et al. (2017) analyze the transfer pricing problems from the perspectives of corporate tax rates in the context of US corporations and their abilities to transfer their profits to several foreign affiliates. The author highlights several methods used by companies for tax avoidance and tax reduction. Huda et al. (2017) provide an overview of the transfer pricing system in Indonesia concerning the operation of multinational companies and their strategies and techniques that optimize the tax arrangements. Dumiter & Boiţă (2017) present a comprehensive analysis regarding the transfer prices path in the Romanian system both in a judicial and economic framework and explain the main challenges ahead.

An important study that encompasses transfer pricing law review in 25 countries suggests the possibilities of handling transfer pricing, the connections with national tax codes, and the interconnectivity between double taxation and transfer pricing (Edge & Robertson, 2019).

Kramarova (2021) studies the harmonization of the arm's length principle to the intra-group transaction pricing and concluded that based on the financial statements it cannot be proved that minimizing tax is correlated with the earnings management. Van Exel et al. (2023) provide an interesting study focusing on the Brazil case regarding the adoption of the OECD-based transfer pricing agenda and presents pro and contra arguments for their implementation as well as some key considerations and potential risks. Prazakova & Kupkova (2023) reveal the importance of tax audits regarding the quality of transfer pricing documentation; the authors conclude that the transfer policy agenda is related to risk analysis and is needed to calculate the market profit range.

The fiscal space problems are complex issues that need special solutions. Kose et al. (2017) developed an interesting study consisting of a database of 200 countries encompassing budgetary resources connected to the government's financial obligations. The conclusions of the study revealed that oil prices influence emerging and developing economies due to the tightening of procyclical fiscal policy. Azzi (2018) highlights the importance of transparent entities in the framework of the MLI Convention only in the context of mandatory binding arbitration.

The creation of the fiscal space in light of the MLI Convention was debated also by Kleist (2018) which suggests that there are several aspects of complexity and uncertainty that the MLI Convention must deal with in the next years including the options available for the contracting states. Dumiter & Jimon (2020) analyze some important features of transfer pricing both from a theoretical perspective and a practical one, suggesting that it is needed further complex taxation mechanisms and instruments to construct the fiscal space within the European Union.

All these studies presented above identify some gaps both in theory and practice regarding the complex phenomenon of economic and judicial double taxation, the mechanism of transfer pricing, and the need for further improvement of the fiscal space area in terms of legislation, financial instruments, and dispute resolution alternatives.

3. Fiscal space mechanism in the context of double taxation conventions and transfer pricing features

The Multilateral Convention (MLI) represents the ultimate instrument developed by the OECD in order to address the complex issues of international and European taxation. Usually, it was signed and ratified double taxation conventions between two states, and later triangular conventions to help in solving cross-border taxation issues. However, this was not enough due to the multi-faceted and complex taxation mechanisms and legislation available at the national level. Starting with the BEPS project and continuing with the CCCTB mechanism, specialists at the OECD level admit that there is still *room – to maneuver* in terms of complex taxation issues at the international level. Due to the complex nature and structure of the multinational enterprises, their affiliates' agenda, and the profit-increasing trends, specialists have developed the MLI convention to address the complex issues of taxation.

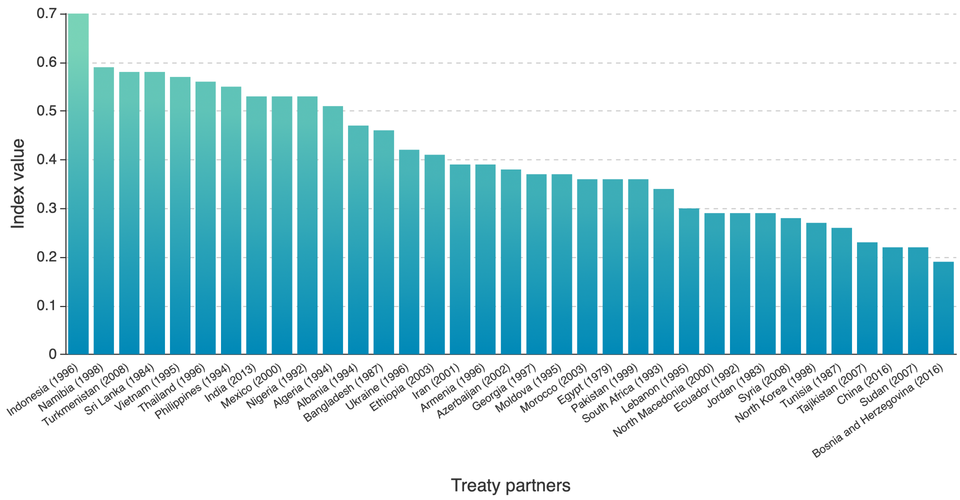

Figure 1 Index of overall source taxation rights: treaties signed by Romania
Note: The treaties' types are original, pre-independence, multilateral, and amended by MLI. Source: Data compiled and downloaded from the tax Treaties Explorer database downloaded on 21 August 2024.

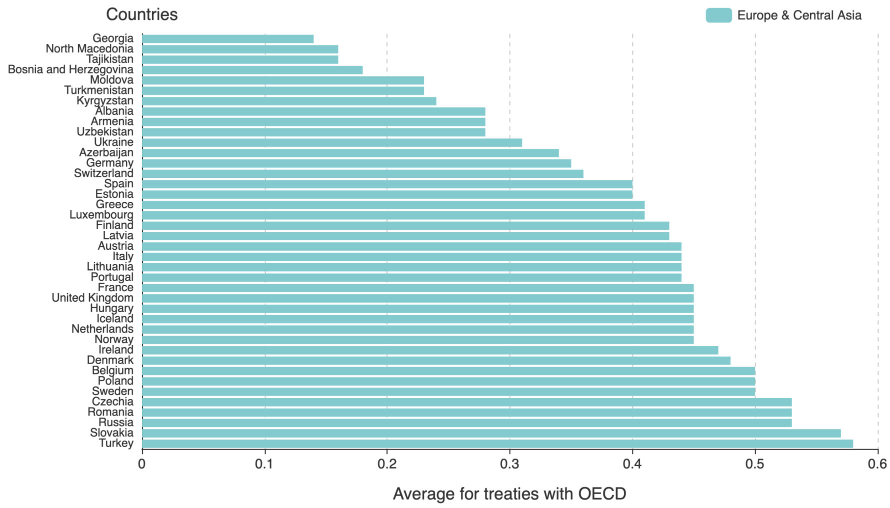

Figure 2 Index of overall source taxation rights: country average. Europe and Central Asia
Note: The treaty's types are original, pre-independence, multilateral, and amended by MLI. Source: Data compiled and downloaded from the tax Treaties Explorer database downloaded on 21 August 2024.

The MLI convention, together with the BEPS Project provides a comprehensive manner to synchronize the bilateral and triangular double taxation treaties, offering the governments of the signatory parties the possibility to renegotiate and amend each bilateral treaty in an integrated manner. At present, it can be observed over 100 jurisdictions have signed the BEPS MLI, which covers approximately 1900 bilateral double taxation conventions worldwide.

Figure 3 Index of permanent establishment concluded by Romania with the other countries worldwide
Note: The treaty's types are original, pre-independence, multilateral, and amended by MLI.
Source: Data compiled and downloaded from the tax Treaties Explorer database downloaded on 21 August 2024.

Figure 1 represents the overall source taxation rights treaties signed by Romania. As can be seen from the chart, the index value is very high for countries such as Indonesia, Namibia, and Turkmenistan due to complex taxation mechanisms and trading opportunities, and at the lower levels are countries such as China, Sudan, Bosnia & Herzegovina. All these aspects suggest that Romania has improved both quantitative and qualitative taxation rights treaty networking.

Closely bound to Figure 1 is Figure 2 which presents the country's average of Europe and Central Asia. As can be noticed, at the higher values of the index are Turkey, Slovakia, Russia, and Romania manifested with complex treaty networking and complex cooperation mechanisms, and at the other part are countries with much smaller averages of complex treaty mechanisms such as Georgia, North Macedonia and Tajikistan.

Figure 3 presents the index of permanent establishment agreements concluded by Romania with other important countries in the world. As can be seen, permanent establishment agreements are very important and sensitive due to the assessment of the MNCs' location and branches, not only in the European Union but also in locations such as Asia and Africa, in which the overall economic, judicial, and social situation is more complex.

Figure 4 Assistance of tax collection concluded by Romania with the other countries worldwide

Note: The treaty's types are original, pre-independence, multilateral, and amended by MLI.

Source: Data compiled and downloaded from the tax Treaties Explorer database downloaded on 21 August 2024.

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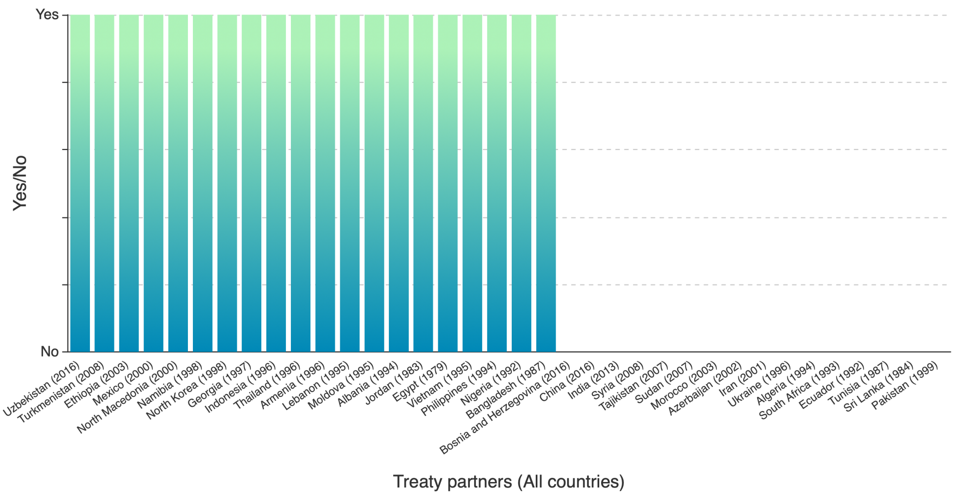

Figure 5 Source of taxation of other income: treaties signed by Romania with the other countries worldwide
Note: The treaty's types are original, pre-independence, multilateral, and amended by MLI.
Source: Data compiled and downloaded from the tax Treaties Explorer database downloaded on 21 August 2024.

Figure 4 reveals the assistance in tax collection agreements signed by Romania with other worldwide countries. As can be seen, Romania has concluded several agreements in tax collection with countries from the American continent as Mexico and Ecuador, with countries from the African continent as Ethiopia, Nigeria, South Africa, Namibia, Zambia, and with countries from the Asian continent as Sri Lanka, Indonesia, Japan, China, and the Philippines.
Figure 5 presents the source taxation of other countries signed by Romania with other countries worldwide. As can be seen, several countries signed with Romania agreements starting with Egypt (1979) and concluding with Uzbekistan (2016) and Bosnia and Herzegovina (2016). As can be observed from Figure 5, other income categories are valuable for Romania and countries from Asia, Africa, and South America, which suggests the importance of tax treaties with different countries from different continents.

4. Practical case studies

We are living in a period of challenges both at the European level, and more acutely at the national level, due to both the crisis generated by COVID-19 and the current armed conflicts in Ukraine and the Gaza Strip, all of which have left their mark on the European and, implicitly, national economy. At the European level, the need to attract tax revenues is still a challenge, with the place where transactions are taxed being carefully analyzed, in an attempt to maximize the value of those taxed in the respective state.

In this context, the role of the tax authorities at the level of the European states has intensified in the sense of complying with the fiscal-state requirements and, at the same time, of collecting tax obligations from the economic agents concerned, perhaps sometimes with too much overzeal and violating not infrequently the national and European legislation on the matter. Directly affected are the economic agents, who are sometimes abusively instituted, the payment of double taxation, respectively the payment of taxes due for the same transaction in two different states. Thus, the need for the intervention of the legislator and the court of law is imperatively necessary in the defense of taxpayers affected by double taxation, in order to prevent a possible international litigation, which would be more difficult to manage because it would bring into question the need to assess the state that would have a greater financial interest than the other in the case brought to court.

Romania is making significant efforts to avoid double taxation, which was also materialized by the signing *on June 7, 2017*, in *Paris, of the Multilateral Convention for the implementation within the tax treaties of measures related to the prevention of base erosion and profit shifting*[1] and at the same time the establishment of the adopted tax reforms, do not constitute sufficient levers for the unitary application of the legal provisions in the field, tax authorities, courts and practitioners in the field often consider divergent opinions[2].

4.1. Case study: A company *versus* ANAF regarding the additional tax payment obligations relating to the late payment increases due to the value-added tax concerning the supplies of three offshore drilling platforms

To analyze the uniform or non-uniform treatment, as the case may be, of the legal provisions on the matter, in various cases pending before the High Court of Cassation and Justice, in the matter of avoidance of double taxation, through the amicable procedure or the method of avoidance of double taxation, the analysis of transfer pricing or the legality of the adjustment of sales income, we will present some relevant solutions, relatively recently.

Thus, in the first case of the case, pending before the High Court of Cassation and Justice [3], the appeal of the appellant company – the applicant, against the court of appeal pronounced by the court of appeal, concerning the decision of the appellants – defendants the National Agency for Fiscal Administration – the General Directorate for the Settlement of Appeals and the General Directorate for the

Administration of Large Taxpayers, which issued the tax decision on the additional tax payment obligations established by the tax inspectorate for legal persons, as regards the part relating to the late payment increases related to value added tax concerning the supplies of three offshore drilling platforms, a sentence that the High Court quashed in part and sent the case back to the first instance.

From the considerations of the case, mainly, an injury suffered by the appellant company is identified, caused by the calculation of main and accessory tax liabilities beyond the legal term, resulting in a value of the accessories established exceeding the legal term 3 times higher than the value of the principal debt itself.

Like the court of first instance, the High Court notes the need to assess the legal nature of late payment penalties and the purpose pursued by their establishment, arguing that, unlike interest, which aims to cover the damage suffered by the non-use of the amounts due, having a reparatory nature, penalties are exclusively like a sanction[4], with a punitive nature. Thus, to apply a tax penalty, it is necessary for the existence of the fault of the person concerned, a fault characterized by a subjective attitude towards the legal norm and/or its ignorance. However, the non-existence of the fault of the appellant company and the imposition of the payment of late payment penalties related to VAT established additionally, would contravene both the relevant case law of the Court of Justice of the European Union and the case law of the High Court of Cassation and Justice, considering that the first instance applied, in a thorough manner, the rules of law and the principle of proportionality, developed in the interpretation given by the European court in the Salomie and Oltean case[5] regarding the infringement of the the principle of proportionality.

At the same time, the appellant-applicant also invoked the misinterpretation of the law as regards the maintenance of the tax claim representing tax obtained from Romania by non-residents and of the interest/late payment increases and late payment penalties related to the said tax. Analyzing the legal provisions, the appeal court considered that the court of first instance had correctly held that the tax authorities applied a tax rate of 16% on the income obtained in the period 2010-2011 since the tax residence of those companies in Cyprus for the reference year of the taxable income was not apparent, but for a later time 2011-2012.

These are only some of the considerations for which the appellant's appeal was admitted and the judgment was quashed as regards the solution given on the request for summons having as object the decision issued by the General Directorate for the Settlement of Appeals and the tax decision on the additional tax obligations to be paid established by the tax inspection for legal persons issued by the General Directorate for the Administration of Large Taxpayers, sending the case back to the court of first instance.

4.2 Case study: A company *versus* ANAF regarding the initiation of the mutual agreement procedure in order to eliminate the double taxation convention

Also in the sense of admitting the appeal of an appellant company – applicant, tax resident in Romania, against the civil judgment pronounced by the appeal court, in another case pending before the High Court of Cassation and Justice[6], the appealed judgment was partially quashed, obliging the defendant – the National Agency for Fiscal Administration to initiate the mutual agreement procedure, to eliminate double taxation under Convention no. 90/436/EEC with the competent authorities of the states of residence of the affiliated companies of A.S.A., respectively in Germany, Hungary, France, the Netherlands, Sweden, Italy, Belgium, and the Czech Republic, in order to eliminate the double taxation existing at the level of the companies in group B.

In essence, from the considerations of the case it was established that, during the period 12.09.2014 - 30.06.2015, the applicant company A. S.A. - located in the group of companies B., was subject to a tax inspection carried out by ANAF - General Directorate for the Administration of Large Taxpayers, on which occasion the transfer pricing file for the period subject to inspection (01.01.2008-31.12.2011) was drawn up, considering the carrying out of economic operations with affiliated companies from other states EU members and additional tax liabilities have been established for the company, resulting in corporate income tax, interest and late payment surcharges and late payment penalties related to corporate income tax.

The applicant company requested the annulment by administrative appeal, the administrative acts of taxation, a request that was rejected, to subsequently request the tax authority to start the amicable procedure with Germany, Hungary, France, the Netherlands, Sweden, Italy, Belgium, and the Czech Republic, to eliminate the double taxation resulting from the tax inspection carried out by the national tax authority.

Following the unjustified refusal of the competent tax authority, under Law no. 554/2004, as subsequently amended and supplemented, the applicant-company applied to the administrative court, requesting that it be obliged, inter alia, to initiate the amicable procedure, with the competent authorities of the states of residence of the companies affiliated to A.S.A., to eliminate double taxation.

From the analysis of the relevant grounds for cassation, the appeal court found that neither the tax authority nor the first instance had specifically indicated where the impossibility of applying the legal rules in question stemmed from and which rules or principles were violated, considering that the first instance had misinterpreted the relevant conventions in the matter, in the sense that the provisions of the conventions do not provide for a prohibition of application, but for the correlation of the rules of the two conventions, to ensure the increase of guarantees to eliminate double taxation (the Arbitration Convention provides a minimum set of rules, and the bilateral conventions may provide additional guarantees).

From the comparison of the provisions of the Arbitration Convention and the bilateral Conventions, the High Court considers that there is no express prohibition that provides for the exclusion of the applicability of the Arbitration Convention in the event of the existence of other bilateral conventions on the avoidance of double taxation. Thus, the provisions of the Arbitration Convention are not subsidiary in nature concerning the bilateral conventions for the avoidance of double taxation. In cases where there is double taxation of the same income carried out by two state authorities, it is necessary to use double taxation elimination mechanisms, meaning that the taxpayer has at hand three alternative ways of eliminating double taxation: either the procedure of challenging the results of the tax inspection; or the use of an international procedure for the elimination of double taxation, based on the double taxation avoidance conventions concluded by Romania with most states; or the use of an international procedure for the elimination of double taxation, under the Arbitration Convention.

As regards the fact that the applicant did not prove the existence of double taxation, respectively did not provide certain proof of the fact that the same income earned in the course of the economic operations carried out with the affiliated companies located in the aforementioned European states would have been subject to taxation by several tax administrations - belonging to these states, the High Court found that the analysis of the existence or not of double taxation is made by the competent authorities of the states within the double taxation avoidance procedure, after its start, not being an a priori condition for starting.

Relevant was the difference in price resulting from the adjustment, considered additional income, and taxed in Romania, which, according to the applicant's claims, was not considered to represent a deductible expense incurred by the affiliated company party to the transaction, thus being taxed in the State of residence of the latter company, the situation was reached in which the same amount was taxed in two different States.

These are part of the considerations for which the appellant's appeal was admitted and the judgment of the first instance was partially quashed, obliging the defendant -ANAF, in the sense of initiating the amicable procedure, to eliminate double taxation.

4.3 Case study: A company *versus* ANAF regarding the tax obligations related to the difference in the tax base in the applicant's damage for the legality of transfer pricing

In general, one of the objectives of economic agents is to attract tax revenues in any form, including through the transfer pricing method, sometimes ultimately materialized in transfer pricing disputes[7], in cases where certain taxpayers affiliated with an international group, which provides most of its income, act as producers with limited functions and risks, can be considered a cost center. From a legal perspective, the disputes in the field of transfer pricing analysis, resolved by the Administrative and Tax Litigation Section of the High Court, are enlightening.

In the first case of the case, pending before the High Court of Cassation and Justice[8], the appeal of the appellant–applicant, against the court sentence pronounced by the first instance was admitted, having as object the decision of the appellants–defendants National Agency for Fiscal Administration - General Directorate for Solving Appeals and Public Finance Administration Ialomita, issuers of the tax decision on the tax obligations related to the differences in the tax bases in the applicant's damage, a judgment that the High Court quashed in part, sent the case back for a retrial for the head of the claim relating to the analysis of the legality of transfer pricing, respectively the legality of the adjustment of the revenues from sales for 2017, and annulled the contested acts for the following reasons:

In one head of claim, the judgment under appeal presents contradictory reasons regarding the analysis of transfer pricing concerning related persons, respectively the legality of the additional income adjustments, of RON 24,514 for 2017, specifying the illegal method of verification by the tax inspection team of the independence of the companies accepted in the final sample of comparable companies presented in the transfer pricing files and unjustified rejection of certain companies in this sample. Thus, the tax inspection team rejected 8 companies out of the 11 accepted in the final sample of the comparability study presented in the transfer pricing file for the period 2013-2014, for the transaction of slaughtering and sale of poultry meat by A. to its related parties, and 5 companies out of the 9 accepted in the final sample of the comparability study presented in the transfer pricing file for 2014 for the car rental transaction by A. to L. S.R.L., arguing that when verifying their independence it was found that they do not comply with the independence criteria and are affiliated, without indicating the reason for affiliation (affiliation through shareholders/associates, affiliation by control, etc.) or the database and its version in which the tax authorities made the respective verifications, on which occasion they imposed transfer pricing adjustments at the level of the company for the years 2013 (in the meantime prescribed) and 2017.

For these reasons, the appellant requested the annulment of the tax liabilities additionally established, which were not erroneously analyzed on the merits by the first instance, invoking, among other things, the report of the judicial expert, which states that the tax authorities should have made adjustments also in the fiscal years in which the RRCT indicator was above the value of the arithmetic average calculated for independent companies, which would have led to the reduction of the tax base and, implicitly, to the reduction of tax obligations.

In conclusion, the High Court upheld the applicant's appeal, considering that this ground of appeal was one of the grounds for cassation invoked, and referred the head of claim relating to the transfer pricing analysis to the court of first instance for retrial, as regards the legality of the adjustment of sales revenues of RON 24,514 for 2017.

Conclusions and recommendations

Taxation issues in the modern world are very complex and comprehensive. Nowadays, due to globalization, the international financial markets, the interactions of the legal systems, and the complex structures of the MNCs, governments across the globe face new and complex challenges.

The fiscal policy represents the ultimate responsibility of the Finance Ministry, *stricto sensu,* and Government, *lato sensu.* The fiscal and taxation prerogative safeguards the national sovereignty and confers to the national level the *room–to–maneuver* of Governments in terms of income and public expenditures.

The national taxation codes and procedure codes are more or less complex, depending on the country type and the objectives of the government. This situation is even more complex in countries of the European Union and especially the Euro Zone where it is established a unique monetary policy, but we have fiscal federalism and tax competition between the countries.

To face these challenges the OECD and European Union organisms have established complex fiscal and taxation structures and BEPS Project, CCCTB, MLI, CbCR, and other specific tools. All these structures are for the consolidation of the fiscal space within the European Union level with a more comprehensive and transparent policy. The DAC transparency directives for reducing tax evasion and tax avoidance are decreasing the aggressive tax planning mechanism and also treaty shopping structures are in the implementation process and will be recalibrated together with the evolution of the taxation systems and legislature developments. Moreover, the transfer pricing policies, together with the mutual agreement procedure and arbitration opportunities will give the courts more instruments in solving national and international litigations in a reduced time frame and with more professional accuracy.

In the third section, it has been observed that Romania's capability to expand international fiscal and taxation cooperation has been seriously improving in terms of the international tax treaty network, transfer pricing guidelines, and fiscal space construction mechanism. Romania has improved its own tax and procedure codes, has developed mechanisms for reducing tax evasion and tax fraud, and further steps towards international cooperation and mutual assistance in taxation matters both at European and international levels.

The three practical cases presented and analyzed in the fourth section suggest that the Romanian courts have increased the potential and credentials for solving complex litigation with international aspects taken into account in the international and European tax law doctrine and legislation. The conclusions for all three cases are oriented towards comprehensive decisions undertaken by the Romanian Supreme Court of Justice in taxation matters in litigation with international aspects of taxation.

This article concludes that it is needed to continue the current trend to construct a comprehensive fiscal space at the European Union level. The currently established mechanism with direction oriented toward fiscal transparency, fiscal justice, inter-country cooperation, mutual assistance between states, and consolidating the tax base must be further improved and developed taking into account also several important features such as the complex national tax codes and constitutions, financial developments worldwide, taxation mechanism developments, fiscal inequities, IT and artificial intelligence developments and other social and behavioral mechanisms.

The future developments of this article are oriented toward studies at European and international levels in terms of the application of MLI and transfer pricing guidelines, the implementation of tax conformity both judicial and economical, and studying the MNCs' aggressive tax planning and fiscal optimization agenda.

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Author Contributions

FCD and GVS are responsible for the study elaboration and development. FCD is responsible for the project coordination and methodology assessment. GVS is responsible for the practical case study collection, analysis, and interpretation. FCD and GVS are responsible for writing, editing, reviewing, and submission of the article.

Disclosure Statement

The authors have not any competing financial, professional, or personal interests from other parties.

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Notes:

[1] Called the Multilateral Convention, ratified in Romania by Law no. 5/2022 published in M. Of. no. 28 of January 10, 2022, which presents the summarized text of 55 treaties for which the Romanian side has submitted to the OECD (the depositary of the convention) the notifications regarding the fulfillment of the domestic procedures necessary for the convention to produce effects.

[2] From the tax practice, it can be seen that some of the economic agents – companies’ risk being double taxed when the tax authorities of the host state, as a result of the controls

undertaken, adjust the transfer prices of transactions with non-resident related entities, on which occasion they impose the payment of an additional corporate tax. In such situations, economic agents most often resort to the remedies offered by the judiciary, although the alternative for resolving the adjustments is to initiate, with the help of the Romanian tax authorities, a non-contentious-amicable procedure, which could be initiated according to the Double Taxation Convention.

[3] I.C.C.J., Administrative and Fiscal Litigation Section, Decision no. 5598/2023, accessible at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=213483#highlight=##.

[4] For more details, see also I.C.C.J., Panel for the resolution of some questions of law, Decision no. 86/2018 – accessible on https://www.iccj.ro/2018/12/10/decizia-nr-86-din-10-decembrie-2018/.

[5] According to the operative part of the judgment of the Court of Justice of the European Union (Seventh Chamber) of 9 July 2015 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — Radu Florin Salomie, Nicolae Vasile Oltean v Directorate-General for Public Finances, Cluj, the principles of legal certainty and the protection of legitimate expectations do not preclude, in circumstances such as those in the main proceedings, that a national tax authority decides, following a tax audit, to make certain transactions subject to value added tax and to impose the payment of surcharges, provided that that decision is based on clear and precise rules and that the practice of that tax has not been such as to give rise to a reasonable expectation in the minds of a prudent and circumspect economic operator that tax will not be applied to such transactions, That is a matter for the referring court to verify. Increases applied in such circumstances must comply with the principle of proportionality. Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax precludes, in circumstances such as those at issue in the main proceedings, national legislation under which the taxable person is refused the right to deduct input value-added tax on goods and services used in the course of tax transactions, who must, on the other hand, pay the tax which he should have charged, for the sole reason that he was not registered for value-added tax purposes when he carried out those transactions, as long as he is not lawfully registered for value-added tax purposes and the tax return due has not been filed. – Case C-183/14 published OJ No 253, 4.8.214 – accessible on https://curia.europa.eu/juris/document/document.jsf?text=&docid=166600&pageIndex=0&doclang=ro&mode=lst&dir=&occ=first&part=1&cid=804664#1.

[6] I.C.C.J., Administrative and Tax Litigation Section, Decision no. 3362/2023, accessible at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=210711#highlight=##.

[7] According to the concept of "transfer pricing", states ensure that the profit obtained from the intra-group transfer of goods/services/intellectual property rights is recorded and taxed where it is obtained. This is a very important aspect, given that transfer pricing can lead to an increase in the profit paid by the group in low-tax jurisdictions or, on the contrary, can

reduce the profit, where taxation is high - the so-called 'base erosion and profit shifting' process, for more details, see https://www.transferpricing.ro/vreau-sa-inteleg-preturile-de-transfer/ce-sunt-preturile-de-transfer.

[8] I.C.C.J., Administrative and Tax Litigation Section, Decision no. 6139/2023, accessible at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=213575#highlight=##.