



COMBATting TAX AVOIDANCE IN THE CASE OF CORPORATE INCOME TAX: THE CASE OF A NEW MEMBER STATE - CROATIA

REINFORCING THE LEGAL FRAMEWORK WITH REPRESSIVE MEASURES

GENERAL MEASURES FOR COMBATting TAX AVOIDANCE

THE NEED TO IMPLEMENT A GAAR ?

- Croatian tax legislation does not (yet) have a GAAR
- However, Art. 10 (1) GTA, provides for a **substance-over form** principle in the process of determining tax facts, the so-called “economic approach principle” – which sets out that *“Tax facts shall be determined according to their economic essence”*
- Similar to article 21 of the Austrian Bundesabgabenordnung – BAO
- Also present is simulation in article 11 GTA *„If a sham transaction conceals another legal transaction, the basis of the assessment of tax liability shall be that concealed legal transaction.”*
- So do we need a GAAR if we have a **substance-over form principle and simulation?**
- **What of the situations where the facts correspond to the reality of things, but on the other hand the purpose of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, spirit and purpose of the tax provisions that would normally apply**
- **abuse of law concept in civil law**

SIDE QUESTIONS:

GAAR COMMITTEE?

ADVANCE RULINGS?

SPECIFIC MEASURES FOR COMBATting TAX AVOIDANCE

THIN-CAP RULES

EXISTING RULES

- 25% of capital or voting rights
- 4:1
- applies only to non-residents

EU INCOMPATIBLE

- Similar to German rules sanctioned by CJUE in Lankhorst-Hohorst
- Widen their application to both residents and non-residents?
- Or only when the lender is coming from a third country?
- Arm’s length principle?
- Decision in Itelcar?

LIST OF TAX HAVENS

- rather extensive (50 states and territories)

- Only consequence is that the WHT is raised to 20% on all services paid to providers whose residence, or place of effective management is on the list
- Potential measure - Non deductibility of expenses when made to tax havens, unless the taxpayer proves that these expenses correspond to real operations and that they are not abnormal or exaggerated

TRANSFER PRICING

- Effectively implemented since 2009

- No APA
- TP documentation (master file, country specific)

CFC RULES

- non-existent

- Croatia surrounded by countries like Bosnia, Serbia and Montenegro which have a low tax rate on corporate income