

FISCAL ASPECTS AT THE LEVEL OF GROUPS OF COMPANIES

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Groups of companies are a reality of the contemporary economic world, and the major interest of many categories of information users for them is easy to understand due to the fact that they actually dominate the economies of most of the developed states or developing states. Our article focuses on the analysis of certain fiscal aspects at the level of groups of companies that carry out their business in Romania, which, in our view, influence the decision to operate in the national market and influence their performance.

Key words: Group of company; Tax consolidation; Group taxation.

JEL Classification Codes: G34, H32.

1. INTRODUCTION

“Groups of companies” and “Tax regulations” are two fields of major interest for the economy of every country. Why have we chosen groups of companies as central topic of our research? Due to the fact that, for more than a century, the grouping phenomena, of economic concentration, began to emerge under various forms in many countries (First the developed states, for example in the United States of America, France, Germany, Great Britain, and subsequently expanded in other states as well), have been evolving over time, and we can say that nowadays, groups of companies dominate the economies of numerous states, and consequently, the global economy as well, viewed as a whole.

Any entity should take into account the tax regulations in the state where it carries out its business, and in order to increase their performance, each of them strives to improve from the fiscal point of view. At the same time, the state, through its regulatory bodies, looks for fair taxation solutions, able to create a business environment in which companies can be sustainable, profitable, attract investors, but at the same time, through the taxes and levies charged, they can support and develop society as a whole. Similar to companies that look for various ways of tax optimization, groups of companies act in the same direction, both through tax solutions implemented at the level of each entity in the group, and at the level of the group of companies as a whole (where the legislation allows for that). In our article, we will analyse the fiscal aspects concerning groups of companies, but also other related aspects, such as, for example, the disconnection that manifests itself between the definition of the group from an accounting point of view, for the purpose of consolidation (consolidated financial reporting) and the fiscal group, in the field of VAT or fiscal consolidation in the field of profit taxation at the level of the group.

Our paper can be included both in the category of fundamental research and in that of the research of the existing practice in the field. The article is based on qualitative and quantitative research methods (field practice research, case study research, methods of examining and measuring phenomena), and among the data sources we are mentioning: observation of phenomena, documents and texts, impressions and reactions of researchers (authors).



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2. DEFINITION OF GROUPS OF COMPANIES AND BRIEF STATISTICS

An increasingly striking reality of the contemporary economic world, groups of companies appeared as a result of strategies to increase performance and minimize risks. Competition on the market determines business entities to constantly find alternatives for grouping, for combining with other entities, in order to meet together the demand with a diversified range of good quality products/services that provide competitive advantages. This combination of companies has as a purpose the establishment of groups of companies which, although without legal personality, behave as an independent entity. Established around a company that ensures their management, groups bring together companies that are independent from a legal point of view, but closely linked to each other through participations and contractual relations. (Banuta M., 2011). A number of advantages and disadvantages are associated with the phenomenon of grouping of companies in the economic practice. Among the **advantages** of forming a group structure mention can be made of: the protection of important assets at group level, the possibility of financing between the member companies of the group, the efficiency of management including risk management, a better management of dividends, the possibility of seconding high-performing employees to companies from the group who need their expertise, fiscal optimization by taxing profit at group level, etc.. As mentioned in the specialised literature, “given that the advantages of the association are indubitable, the company group has intensified all over the world in the past two centuries...Groups can be extremely complex; they can comprise tens, hundreds and even thousands of companies.” (M.C. Popa, 2011).

Of course, the group structure has certain **disadvantages** as well, such as: complicated decision-making system at group level (delays and lack of flexibility, the emergence of conflicts between the management at the subsidiary level and the general management at the group level (implemented by the parent company), the creation of very complex group structures the consolidated financial statements of which are difficult to understand by the interested parties, etc..

Due to our desire to be pragmatic, we will not mention the multitude of definitions of the group of companies existing in the specialized literature and will limit ourselves to defining them from an accounting point of view, definitions which in our opinion indicate the essence of their organization and functioning. Before defining them, we specify that in Romania, at the present time, one of the following accounting standards is applicable to companies:

- unlisted companies (which do not have securities traded on a securities market) apply the regulations stipulated in Order of the Minister of Public Finance no. 1802/2014 concerning individual annual financial statements and consolidated annual financial statements;

- companies whose securities are admitted to trading on a regulated market apply the regulations in compliance with the International Financial Reporting Standards (IFRS) approved by Order of the Minister of Public Finance no. 2844/2016.

In the view of both accounting reference regulations mentioned above (Order of the Minister of Public Finance no. 1802/2014, art. 8, and IFRS 10 Consolidated financial statements, Appendix A “*Defined terms*”), the group is defined as a parent company and all its subsidiaries. At the same time, parent company means an entity that controls one or more subsidiaries/entities, and subsidiary means an entity controlled by a parent company/another entity, including any subsidiary of the parent company that manages them.

In the figure below, we will show a simplified group structure, in which we can see the relationships that are formed between companies as a result of the holdings of shares in the share capital and that lead to the formation of the group of companies, their coordination by the group leader who is the parent company, but also the legal independence of the companies in the group.

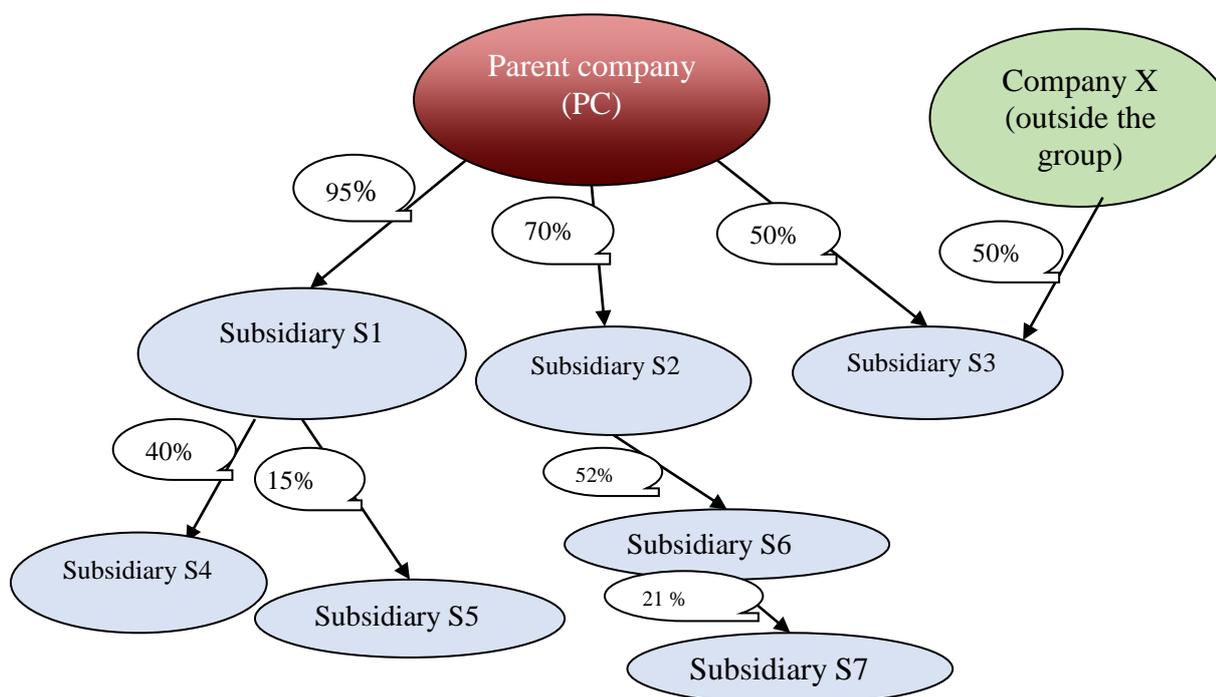


Figure no. 1 Exemplification of a group structure (organizational chart of the group)

In the group organizational chart exemplified above, the percentages indicate the share held in the share capital by each company that acquired the securities (shares). The establishment of groups of companies is related to the processes of acquiring shares that are a divisional part of the share capital of another entity, which they intend to hold for a long period of time (the company that acquires them will register them under financial fixed assets). Holding such securities is the consequence of performing a diversified range of operations¹:

→ the subscription of shares issued by new companies, of which, most often, the initial company is the founder. Following the subscription, the subscribed contribution is paid in cash or in kind (goods);

→ the participation in a capital increase of an already existing company, by cash contribution or by partial contribution of assets;

→ the purchase of securities issued by already existing companies, by purchasing from the stock exchange, by tender offer, etc..

In the accounting regulations applied by unlisted companies (legislated by Order of the Minister of Public Finance no. 1802/2014) two main categories of groups are distinguished according to whether they exceed or not two of the size criteria² related to total assets, net turnover and the average number of employees: *small* and *medium-size groups*, and *large groups*, respectively. In general, parent companies of small and medium-size groups are exempt from drawing up consolidated annual financial statements (certain exceptions are provided, such as, for example, if the small or medium-size group includes a public interest entity). The parent company of the group that has the obligation to submit the consolidated annual financial

¹ If it intends to resell the securities after a short period of time (in the next 12 months), the company that acquires the securities will register them in the category of current assets, but, as indicated by the accounting regulations, the company will be excluded from the consolidation perimeter and will not affect the image of the group of companies.

² The values are determined cumulatively, by adding up the values from the individual financial statements of all the entities in the consolidation perimeter (the parent company together with the subsidiaries that are to be consolidated)

statements can choose to prepare them by applying either the regulations of Order of the Minister of Public Finance no. 1802/2014 or the IFRS (International Financial Reporting Standards) ones. Through the **consolidated financial reporting** (Consolidated Balance Sheet, Consolidated Profit and Loss Account, Consolidated Statement of Changes in Equity, Explanatory Notes to the Consolidated Annual Financial Statements) **the parent company will present for the entire group its financial position** (assets, liabilities and equity at group level) and *its performance* (profit or loss at group level) as if the group were a single stand-alone entity.

In relation to the **consolidation of accounts**, the delimitation of the **consolidation perimeter** is related to the type of control/influence exercised by the parent company in the subsidiaries. Actually, the consolidation perimeter, i.e. the set of companies retained in order to draw up the consolidated annual financial statements (**financial reporting of groups of companies**), consists of the parent company together with all the subsidiaries over which it directly or indirectly exercises exclusive control (generically referred to as “control”), joint control or significant influence. The type of control or influence is identified according to the percentage held by the parent company directly or indirectly in the totality of voting rights in the General Meeting of Shareholders (GMS) of a subsidiary, but also by the analysis of certain additional factors, such as, for example the contracts concluded with other companies for the exercise of joint control, the power to appoint or revoke the majority of the management, administration or supervision bodies of a subsidiary, indications that show the exercise of significant influence over a subsidiary (significant transactions between the entity and the entity in which it invested, exchange of management staff, participation in the drafting process of policies, including participation in decision-making in relation to dividends and other distributions, providing essential technical information), etc..

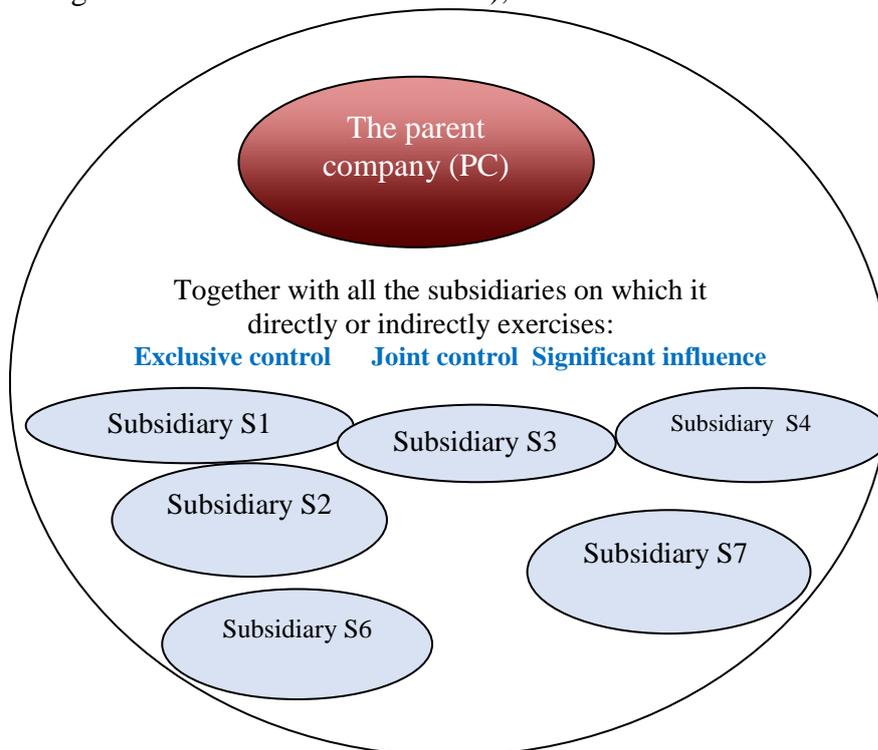


Figure no. 2 Consolidation perimeter (the parent company together with the subsidiaries retained with the purpose of preparing the consolidated financial statements)

As we will analyse in the next subchapter, the group defined from an accounting point of view and sized for the preparation of consolidated financial statements is different from the

group that can be constituted for fiscal purposes, in terms of VAT or for fiscal consolidation for the profit taxation at group level.

The brief statistic of the groups of companies, presented here in below, has the purpose of emphasizing their importance in the national economy.

On the website of the National Institute of Statistics, we find the most recent statistics of the groups of companies active in Romania and have the reference year 2020 (the next one will be presented in 2023). In Romania, in 2020, 91,217 *enterprise groups* were identified, out of which 5,523 *resident enterprise groups* and 85,694 *multinational enterprise group* (523 controlled from inside, and 85,171 controlled from abroad, respectively). In 2020, out of the total number of multinational enterprise groups controlled from abroad and identified in Romania, 13,852 are groups controlled by foreign legal entities, and 71,319 are groups controlled by foreign natural persons. Germany, France and the United States of America occupy the first three places in the top of the countries that control subgroups of enterprises in Romania. In Romania, in 2020, a percentage of 28.6% of the total number of employees in active enterprises carried out their activity in *enterprises that are part of multinational groups controlled from abroad*. In 2020, the distribution of groups of companies in Romania by economic activities shows that out of the total groups of companies, 34% operate in the fields of “Wholesale and retail trade, Repair of motor vehicles and motorcycles”, 12% operate in the field of “Constructions”, 10% operate in the “Manufacturing industry”, 10% operate in the field of “Professional, scientific and technical activities”, and 8% in the field of “Real estate transactions”. (www.insse.ro).

3. TAX ASPECTS AT THE LEVEL OF GROUPS OF COMPANIES

In this part of the paper we will approach certain tax aspects that must be taken into account by the group as a whole, but also by individual subsidiaries when the tax regulations refer to them. Knowing and applying tax regulations correctly is not only a requirement of the law, but also a possibility of tax optimization at the level of the group of companies.

Without claiming to carry out an exhaustive presentation of tax regulations applicable to groups of companies, we will approach aspects related to transfer prices, the tax group in the VAT field, the excess costs of indebtedness, the single tax group in terms of profit tax.

▪ Transfer prices

As appreciated in the specialized literature “Both multinationals (due to their desire to optimize their activity in terms of taxation and to ensure an optimal level of the working capital) as well as the national tax authorities (due to their desire to “optimize” the *cash-flow* to the state budget) are showing an increasing interest in transfer prices, and implicitly in the efficiency of the actions they promote in this field” (D. Pătroi, F. Cuciureanu, V. Radu, 2013).

The tax regulations³ provide that transactions between affiliated persons are carried out according to the *principle of the market value*. According to this principle, the prices applied in transactions/operations between affiliated persons *must not differ* from those applied in transactions/operations that take place between unrelated persons, for example between companies that are not part of the same group of companies, if similar economic and commercial conditions are noticed. This principle requires that companies that are part of the same group of companies carry out transactions as if they were taking place between unrelated parties in the open market. If the principle of the market value is not observed, the tax authorities may adjust/assess the amount of income or expenses related to the income or loss of any of the related parties based on the level of the *central tendency of the market* (according to the Fiscal Procedure Code). According to the tax regulations “*The central tendency of the market* will be

³ Law no. 227/2015, on the Fiscal Code, Art.7, 11

considered *the median value of the comparison interval of the financial indicators of the identified comparable companies/transactions* or if *there are not enough comparable companies/transactions identified*, in order to be able to establish a comparability interval, they will identify at most three comparable companies or transactions *and the arithmetic mean of their financial indicators or of the identified transactions will be used*".

When establishing the market value of transactions carried out between affiliated persons, the most appropriate method of the following is used:

a) price comparison method;

b) the cost plus method;

c) the resale price method;

d) the net margin method;

e) the profit sharing method;

f) any other method recognized in the Transfer Pricing Guidelines issued by the Organization for Economic Cooperation and Development for multinational companies and tax administrations, as amended/changed and supplemented.

In Romania, according to the legislation in force⁴, taxpayers who carry out transactions with affiliated persons have the obligation **to draw up the file of transfer prices** or **to document the principle of the market value**, in a fiscal inspection. The obligation to draw up the transfer price file appears **depending on the category of taxpayers**: large or small/medium and **whether or not certain significance thresholds have been reached** (referring to transactions with affiliated persons with a total annual value, calculated by adding up the value of the transactions carried out with all affiliated persons, exclusive of VAT) that **concern interest** collected/paid for financial services, transactions concerning *services received/provided*, transactions concerning the *acquisitions/sales of tangible or intangible goods*.

For example, the parent company PC rented to the subsidiary S1, which it exclusively controls, fixed assets, buildings and access ways, platforms, the monthly rent is 6,000 RON + VAT for buildings and access ways and 3,000 RON + VAT for fixed assets (the PC chose to charge VAT on the rental of real estate).

The selection of the transfer price method

Taking into account the publicly available information concerning the level of rent for fixed assets, buildings and access ways, platforms, **the method of external price comparison** can be used by which the prices charged by the PC are compared with the prices identified on the Internet for similar rentals.

Applying the price comparison method

In the application of the price comparison method, the criteria mentioned by the OECD Transfer Pricing Guide are taken into account when applying this method, more specifically, that the compared transactions are carried out in the same period of time for the same goods/services. In the transfer price file drawn up by the PC, the result of the comparison of the prices charged by the company PC in connection with the rental transactions with those charged by the free market⁵ will be presented and it is identified/justified that the company PC and S1 have observed the principle of the free market for the intra-group rentals of fixed means, buildings and access ways, platforms.

⁴ ORDER no. 442 of 22 January, 2016 on the amount of the transactions, preparation deadlines, content and conditions for the request of the transfer price file and the procedure of adjusting/assessing transfer prices

⁵ The Annexes shall include photos/print screens of the rental offers on the Internet

Some of the analyses carried out by Romanian professionals in the field of taxation (M. Păunescu, A.F. Popa, R. Ciobanu, 2020) show the importance that must be attached to transactions with affiliated parties, starting from the complexity of the identification of the affiliation relationships, continuing with the prices at which such transactions must be carried out and the ensuing reporting obligations. In relation to the question concerning the need to resort to a valuator in transactions with affiliates, in the paper mentioned hereinabove, the authors conclude that “The existence of a valuation report in the case of an asset sale to affiliates is not a legal obligation, but can help the taxpayer to support its statements related to the fact that the transfer price was based on the market prices. However, the mere existence of a valuation report does not guarantee that the tax authorities will simply accept that report.”

▪ The single fiscal group in terms of VAT

According to the tax regulations⁶, two or more taxable persons established in Romania who, being independent from a legal point of view, are in close relations with another from an organizational, financial and economic point of view, can choose to be treated as a **single tax group**. Taxable persons whose equity is owned directly or indirectly in a proportion of more than 50% by the same associates are deemed as having a close relationship from the financial, economic and organizational point of view. The tax group can consist of at least two taxable persons, and the following cumulative conditions must be met:

- a taxable person can only belong to one tax group;
- the option must refer to a period of at least 2 years (the option refers to the group, not each member of the group);
- all the taxable persons in the group must apply the same fiscal period (month or quarter);
- among the members of the group, one is appointed **representative**.

The supplies of goods and services made by **each member of the group** are subject to the normal taxation regime, each member of the group being considered a *separate taxable person*. As a consequence, each member of the single tax group reports in their own VAT return any supply of goods, provision of services, import or intra-Community acquisition of goods or any other operation carried out by them during the fiscal periods and send their tax return to the group representative. The VAT returns drawn up by each member of the group are not processed in the IT system for the administration of receivables⁷, they are, on the other hand, archived in the tax file of the member of the group. *Each group member pays no tax due and claims no refund according to their VAT return.*

The representative of the single tax group, being at the same time a member of the group, reports in its own tax return, any delivery of goods, provision of services, import or intra-community acquisition of goods or services, as well as any other operation carried out by or to it on during the fiscal period. The representative *takes over in the first consolidated return from the group members the VAT balance from the end of the previous fiscal period* (either the balances of VAT payable, unpaid until the date of submission of such return, or the balances of the negative amount of the tax for which reimbursement was not requested from the VAT returns of the group members). The representative of the single tax group **reports in the consolidated statement the results from its own return and the results from all the VAT returns received from other members of the group**. It submits to the competent tax body its own tax return, all the tax returns of the other members, as well as the consolidated tax return form. The representative also

⁶ Art. 269 para. (9) of the Fiscal Code

⁷ The information filled in such tax returns is used to check the data filled in by the group representative in the consolidated VAT return corresponding to the same period.

<p>The submission, at the end of the month, by the representative, of the 4424 “VAT receivable” account balance (for which the reimbursement has not been requested), in order to be taken over in the first consolidated VAT account:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: right;">451/RA</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%; text-align: right;">4424</td> <td style="width: 30%; text-align: right;">1,950 RON</td> </tr> <tr> <td style="text-align: right;">Settlements between affiliated entities. Analytical balance of the representative Alfa</td> <td></td> <td style="text-align: right;">VAT receivable</td> <td></td> </tr> </table> <p>The submission, at the end of July, by the representative, of the 4424 “VAT receivable” account balance</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: right;">451/RA</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%; text-align: right;">4424</td> <td style="width: 30%; text-align: right;">2,400 RON</td> </tr> <tr> <td style="text-align: right;">Settlements between affiliated entities. Analytical balance of the representative Alfa</td> <td></td> <td style="text-align: right;">VAT receivable</td> <td></td> </tr> </table> <p>Note: Account 451 “<i>Settlements between affiliated entities</i>” is not closed, its balance due or credit balance reflecting the cumulated situation of the value added tax sent to the group representative since the establishment of the group. This account shall be closed when the parties decide accordingly.</p> <p>For example, it can receive liquidities from the representative Alfa SA as a result of the amount it should have received:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: right;">5121</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%; text-align: right;">451/RA</td> <td style="width: 30%;"></td> </tr> <tr> <td style="text-align: right;">Cash in bank in RON</td> <td></td> <td style="text-align: right;">Settlements between affiliated entities. Analytical balance of the representative Alfa</td> <td></td> </tr> </table>	451/RA	=	4424	1,950 RON	Settlements between affiliated entities. Analytical balance of the representative Alfa		VAT receivable		451/RA	=	4424	2,400 RON	Settlements between affiliated entities. 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Analytical balance of the member Gama SRL</td> <td></td> </tr> </table> <p>VAT payable at the end of July 3,200 (the representative Alfa SA)+ 2,100 RON (the member Beta SA)= 5, 300 RON</p> <p>VAT receivable at the end of July: 1,950 RON (the member Gama SA)+2,400 RON (the member Gama SA) = 4,350 RON</p> <p>Clearing between VAT payable and VAT receivable:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: right;">4423</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%; text-align: right;">4424</td> <td style="width: 30%; text-align: right;">4,350 RON</td> </tr> <tr> <td style="text-align: right;">VAT payable</td> <td></td> <td style="text-align: right;">VAT receivable</td> <td></td> </tr> </table> <p>Payment of VAT to the budget, by transfer:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: right;">4423</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%; text-align: right;">5121</td> <td style="width: 30%; text-align: right;">950 RON</td> </tr> <tr> <td style="text-align: right;">VAT payable</td> <td></td> <td style="text-align: right;">Cash in bank in RON</td> <td></td> </tr> </table> <p>Note: Account 451 “<i>Settlements between affiliated entities</i>” is not closed, its balance due or credit balance reflecting the cumulated situation of the value added tax sent to the group representative since the establishment of the group. 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▪ **The single tax group in terms of profit tax**

Fiscal consolidation in the field of corporate profit tax that allows the grouping of companies with the purpose of offsetting profit against loss, an advantage that already used by companies in many European states (Germany, Holland, France, Poland, Portugal, Austria, Cyprus, etc.), could be applied and in Romania starting from 1st January, 2022.⁸

Consolidation is possible only in the case of Romanian companies and companies with registered offices in Romania established according to European legislation, between which voting rights or equity are held, directly or indirectly, **of at least 75%** for an uninterrupted period of one year, before the beginning of the fiscal consolidation period; to apply the same fiscal year and the same corporate tax declaration system; to be payers of profit tax only; not be part of another tax group in the field of profit tax and not be in course of dissolution/liquidation. The period of application of the fiscal consolidation system is at least 5 years. The tax group will have to designate a member of the group as the **person responsible**⁹ for determining the consolidated tax profit or loss of the tax group, submitting the profit tax return and making the payment of profit tax on behalf of the group.

According to tax regulations, **each member of the tax group** *calculates the tax profit or loss individually*. The consolidated fiscal profit or loss of the fiscal group is calculated quarterly/annually, accumulated from the beginning of the fiscal year. In order to determine the consolidated fiscal profit or loss of the fiscal group, the responsible person has the obligation to highlight in the Register of Tax Records the individual fiscal profit or loss calculated by each member, as well as the amounts that are deducted from the profit tax owed by the group, including those of the responsible person. We are mentioning that the tax losses recorded by a member of the group before the application of the tax consolidation system are recovered by that member, only from its taxable profits and only after leaving the group, assuming that such losses have not expired. **The consolidated fiscal profit or loss of the fiscal group** is determined by the responsible legal entity, by *algebraically summing up the fiscal profit or loss calculated individually by each member of the fiscal group*. The **positive consolidated** tax result is *taxable profit*, and the **negative consolidated tax result** is *tax loss*. The profit tax is calculated by applying the rate of 16% on the positive consolidated fiscal result of the group.

Example concerning the calculation of the consolidated fiscal profit or loss

The company Alfa SA, a Romanian legal entity, owns for an uninterrupted period of 2 years, 90% of the securities of the company Beta SA, and 78% of the securities of the company Gama SRL respectively (Beta SA and Gama SRL are Romanian legal entities). The three companies form a single fiscal group in terms of profit tax, Alfa SA being named the responsible legal entity. The table below shows the accounting and tax results of the three companies and the method of calculating the profit tax payable at the level of the single tax group.

⁸ This measure is included in Law no. 296/2020 amending and supplementing Law no. 227/2015 on the Fiscal Code, it came into effect on 1st January 2021, but the actual application of the tax consolidation has been carried out since January 2022

⁹ The responsible person may be a Romanian legal entity/a legal entity with the registered office in Romania, established in compliance with the EU laws. Member of the fiscal group in the field of the profit tax

Table no. 2 Calculation of the profit tax at the level of the single fiscal group - Example

Explanations	Beta SA (member)	Gama SRL (member)	Alfa SA (responsible entity)	Single fiscal group
Accounting profit or loss	640,000 RON	(400,000 RON)	800,000 RON	
Fiscal profit or loss	750,000 RON (sent to the company Alfa SA)	(480,000 RON) (sent to the company Alfa SA)	960,000 RON	Consolidated fiscal profit or loss = 750,000 RON+(-480.000 RON) +960,000 RON= 1,230,000 RON
Profit tax payable	-	-	-	1,230,000 RON*16 %= 196,800 RON payable by the responsible entity (Alfa SA)

If they were not members of the single tax group, the company Beta SA would have paid profit tax in the amount of 120,000 RON (750,000 RON*16%) and the company Alfa SA would have paid a profit tax of 153,600 RON (960,000 RON*16%), which at the group level would have meant a paid profit tax of 273,600 RON. Due to the fact that they choose the single tax group in terms of profit tax, they have a tax advantage at group level of 76,800 RON.

▪ **The deduction of excess debt costs**

Excess debt costs are the difference between the expense that represents the interest corresponding to all forms of debt and incomes from interest (including other incomes equivalent from the economic point of view). According to tax regulations, *an independent entity* (one that is not part of a consolidated group for financial accounting purposes and has no associated enterprise and no permanent office) fully deducts the excess debt costs, in the tax period in which such costs are incurred.

Entities that **are not independent** deduct *excess debt costs*:

- Up to the limit of a deductible ceiling represented by the RON equivalent of an amount of 1,000,000 euros calculated at the exchange rate communicated by the National Bank of Romania valid for the last day of the fiscal quarter/year;

- The part that exceeds the ceiling of 1,000,000 euros can be deducted in a limited manner up to the level of 30% from the following calculation base:

Calculation base= Incomes – Expenses recorded according to the accounting regulations applicable in the reference fiscal period – Non-taxable incomes + Income tax expenses + Excess debt costs + tax depreciation

Example concerning the deduction of excess debt costs for a group company

During the financial year 2021, the parent company Alfa SA grants a loan in the amount of 2,000,000 RON to the company Beta SA, which it exclusively controls. The interests charged to the subsidiary during the financial year are 140,000 RON. The company Beta SA has the following financial profit or loss (The exchange rate communicated by the National Bank of Romania for the last day of the fiscal year is 4.9351 RON/EUR):

Total income, from which:	39,000,000 RON
- Incomes from interests	31,000 RON
Total expenses, from which:	35,000,000 RON
- Interest expenses	4,900,000 RON
Non-taxable incomes	42,000 RON
Profit tax expense	630,000 RON
Tax depreciation	590,000 RON

From the previous year, the company reported a potentially deductible interest of 450,000 RON.
Are the excess debt costs fully deducted at the subsidiary Beta SA?

Excess debt cost = 4,900,000 RON - 31,000 RON = 4,869,000 RON

The excess debt cost, in the amount of 4,869,000 RON plus 450,000 RON from the previous period, is deductible up to the upper limit of 1,000,000 euro (4,935,100 RON at the exchange rate of 4.9351 RON/euro). The amount that exceeds the upper limit = 5,319,000 RON – 4,935,100 RON = 383,900 RON.

The calculation base = Incomes – Expenses recorded according to the accounting regulations applicable in the reference fiscal period – non-taxable incomes + Profit tax expenses + Excess debt costs + Tax depreciation = 39,000,000-35,000,000- 42,000 + 630,000+ 4,86,000+590,000= 10,047000 RON

Deductibility limit = 10,047,000 RON x 30% =3,014,100 RON

The excess debt costs may be fully deducted in the fiscal period corresponding to the calculation, the amount that exceeded the upper limit of 1,000,0000 euro may be fully deducted from the additional 30 % of the calculation base showed hereinabove 383,900 RON < 3,014,100 RON

Note! If the excess debt costs cannot be deducted in the fiscal period corresponding to the calculation, they shall be carried forward, without a time limit, in the following fiscal years, under the same deductibility conditions.

4. CONCLUSIONS

The membership of an entity to a group of companies provides it with multiple advantages, for example increased performance, a better position on the market (competitive advantages), minimization of risks, easier access to credit (including intra-group credit), better liquidity management through the Cash-pooling system (if the purpose is to implement it at the group level), etc. Accounting and taxation specialists who support these companies that have affiliated entities or are part of groups of companies, in carrying out/recording their activity, must have very good knowledge of the tax and accounting legislation in order to be able to offer good quality services both with the purpose of avoiding potential fines/penalties following ANAF controls, but also in order to find ways of fiscal optimization for the companies in the group or for the group as a whole.

From the brief analyses carried out in the article, we can see that **the group defined from an accounting point of view**, whose parent company has the obligation, in certain situations, to draw up annual consolidated financial statements, *is different* from **the single fiscal group** that can be constituted in terms of VAT. Moreover, the fiscal group that can be constituted in the field of profit tax *is different* from the consolidated group for financial accounting purposes or from the one constituted for VAT. Companies that have transactions/operations with affiliated

persons must take into account that carrying out the operations between them must be done **in compliance with the market value principle**, as if the operations were carried out with external third parties, i.e. independent persons. Certain companies also have the obligation to **draw up the transfer price file**. This obligation **appears depending on the category of taxpayers**: large or small/medium and **whether or not certain thresholds of significance have been reached** (in relation to transactions with affiliated persons with a total annual value, calculated by adding up the value of transactions made with all affiliated persons, without VAT) **that concern interest collected/paid for financial services, transactions concerning received/provided services, transactions concerning purchases/sales of tangible or intangible goods**. If a **fiscal group in terms of profit tax** is chosen, each *member of the fiscal group has the obligation to prepare the transfer price file* that will include both the transactions carried out with the members of the fiscal group and those with affiliated entities outside the group fiscal. It is also necessary to take into account aspects related to the **deduction of excess debt costs, administration and management services within the group** (between affiliated persons the costs of administration, management, control, consultancy or similar functions can only be deducted if such entities as for example the parent company or another company in the group, effectively provides such services to affiliated persons (the services must be actually provided and there must be evidence of their provision) and in the price of the goods and in the value of the fees for the services provided are also taken into account services or administrative costs.

In relation to **the decision of entities to choose to become a member of a VAT group**, it should be taken into account that the main advantage is that it allows the preservation of VAT cash flows at the level of its members. This advantage arises if one or more of the members of the group are normally in a position where, at the end of the tax period, they have to pay VAT, while other members are in a position where they normally record a balance of VAT to be reimbursed from the state budget (either as a result of the main activities they carry out, for example operations exempted with the right of deduction, non-taxable operations in Romania for which they are entitled to deduction, or as a result of the development of significant investments). The use of a tax group allows individual VAT positions to be offset between the respective members. Disadvantages can also be identified such as the additional administrative obligations of the group representative which can be reflected by charging certain amounts to the members, the modification of the activity of the members who were in a position to claim the VAT refund into taxable persons who owe VAT payable to the budget, so that the existence of the tax group is no longer justified (the group must be maintained for a minimum period of two years). Another disadvantage is that each member of the tax group is separately and jointly liable for the VAT obligations of the other members for as long as they are members of the group.

And in the case of the option for belonging to **a single tax group in terms of corporate profit tax**, the main advantage is also related to the improvement of the cash flow management, as a result of the possibility of offsetting the tax losses incurred by some of the group members with the profits earned by others members, which leads to the payment of a reduced profit tax at the group level. Nevertheless, disadvantages can also be identified such as the fact that the tax losses recorded by group members before the period of application of the tax consolidation system cannot be recovered at group level, but only individually by each member, from their own profits and only after leaving the group. However, the legislative initiative on fiscal consolidation is viewed as a major step made by Romania for the elimination of the competitive disadvantages of groups of Romanian legal entities versus groups established in states that had legislated this system, the creation of a business environment that boosts investment growth, including in relation to the foreign ones.

In the field of taxation of companies that are part of groups of companies, including multinationals, new challenges are in store for us, such as the reform of international taxation,

with the purpose of implementing a fair system of taxing the profits of multinational companies for the benefit of all the states that contribute to earning them.

REFERENCES

1. Mariana Bănuță, *Contabilitate consolidată (Consolidated Accounting)*, Sitech Publishing House, Craiova, p.8, 2011
2. Dragoș Pătroi, Florin Cuciureanu, Vigi Radu, *Prețurile de transfer. Între optimizare fiscală și evaziune transfrontalieră (Transfer prices. Between tax optimization and cross-border tax evasion)*, 2nd edition, C.H. Beck Publishing House, p.10, 2013
3. Mirela Păunescu, Adriana Florina Popa, Radu Ciobanu, *Tranzacțiile cu părți afiliate: câteva considerente de actualitate (Transactions with affiliates, a few topical considerations)*, *CECCAR Business Review*, pp. 36-43, No 11/2020
4. Manole Ciprian Popa, *Grupurile de societăți (Groups of companies)*, C.H. Beck Publishing House, Bucharest, p. 3, p.30, 2011
5. Order of the Minister of Public Finance no. 1802/2014 concerning the individual annual financial statements and the consolidated annual financial statements
6. Law no. 227/2015 (as updated) *Fiscal Code*
7. Order no. 442/2016 on the values of the transactions, the deadline for the preparation, the content and conditions for the request of the transfer pricing file and the procedure of the adjustment / estimation of the transfer prices.
8. <https://www.avocatnet.ro/>(*Grupul fiscal unic 2017. De ce (nu) merită ca firma ta să facă parte dintr-un grup de TVA (The 2017 Single Tax Group. Why it is (not) worth that your company be a VAT group member)*
https://www.avocatnet.ro/articol_45155/Grupul-fiscal-unic-2017-De-ce-nu-merita-C4%83-ca-firma-ta-s-C4%83-fac-C4%83-parte-dintr-un-grup-de-TVA.html)
9. <https://www.zf.ro/> (*Noerr: Cum funcționează grupul fiscal pentru impozit pe profit? Cum se aplică sistemul de consolidare fiscală? Reguli de calcul, (Noerr: How does the tax group for profit tax work? How is the tax consolidation system applied?)*
<https://www.zf.ro/companii/noerr-cum-functioneaza-grupul-fiscal-pentru-impozit-pe-profit-cum-se-19971283>)
10. www.insse.ro (*Grupurile de întreprinderi din România în anul 2020 (Groups of companies in Romania in 2020)*
https://insse.ro/cms/sites/default/files/com_presa/com_pdf/grup_intrep2020r.pdf)