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THE COMBINED EFFECT OF 5TH ANTI-MONEY LAUNDERING DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVE ON LARGE ENTERPRISES AND BUSINESSES

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I hereby declare that I have compiled the thesis independently
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ABSTRACT

The taxation is required to provide every resident of the state with the minimum level of life quality. The government uses the taxes to improve the access to education, healthcare and to create comfortable living conditions for everyone. That is why tax avoidance is bringing harm not only on the global level but of personal level as well. This thesis is aimed at searching the most effective measures of fight against tax avoidance and money laundering. The main purpose of the paper is to analyse the situation in general and see what steps the governments take in order to reduce the level of tax avoidance and how to make these steps more effective. The main tools, which help to regulate the situation with tax avoidance, are Anti-Money Laundering Directive and Anti-Tax avoidance Directive. The newest versions of the Directives bring new changes to national policies and this paper aims to help to find the most effective ways of implementation of the Directives.

INTRODUCTION

The main purpose of taxation is to give resources to the government to achieve and realize social goals. The achievement of these goals is the main purpose of the existence of all democratic societies. Those goals include the quality of life of citizens, high level of healthcare, good opportunities for education and general welfare of the nation. In fact, by giving part of revenues to the budget people put an essential contribution to creating a healthy environment in the country. By paying taxes people and businesses invest in national security, safe and comfortable environment and qualitative living conditions.

While the taxation goal is to achieve long-term goals, most of the people prefer to focus only on short-term profits. Therefore, from the perspective of regular citizens taxation only takes their money and not giving anything valuable back. That is why tax evasion and tax avoidance takes place quite often in modern society and has developed in many various forms. In order to ensure the functioning of the state, the government is obliged to undertake various measures to prevent different forms of tax avoidance and tax evasion.

Losses for the state budget are not the only threat to the welfare of society. Money laundering is also a huge problem for the government. The goal of most of the crimes is to gain as much profit as possible. One person or even a group may conduct illegal activities with the only goal to receive as many profits as possible. Money laundering is the only way to use money obtained illegally without revealing its source. Illegal activities may take different forms, such as arms smuggling, organized crimes, drug trafficking, prostitution, bribery. All these activities can bring huge amounts of money, which, however, cannot be spent without being noticed by the government. In order to hide the illegal revenues people involved in criminal activities are hiding the source of profit by changing the form of activity or the transfer of capital to a place where those revenues will attract less attention.

In response to growing concern about money laundering Summit in Paris in 1989 founded the Financial Action Task Force on Money Laundering (FATF) to coordinate international activities in this direction. One of the primary goals of this organization was the development of forty Recommendations defining the measures that states must accept in order to begin an effective fight against money laundering. The FATF includes 29 countries and jurisdictions, including major financial centres of Europe, North and South America, and Asia as well as countries that are members of the Council of Europe and the Gulf Cooperation Council. The FATF works closely with a number of other international organizations, involved in the fight against money laundering. Despite the fact that its secretariat is located in the building of the Organization for Economic Cooperation and Development, the FATF is not part of this organization. However, in those areas where the efforts of the two organizations are aimed at the achievement of the single goal (for example bribery, corruption, and activity international financial system) secretariats consult and implement information exchange.

The European Commission has a goal to reduce tax avoidance practices because they influence economic stability both on the territory of the EU and outside of the Union. One of the tools, which are dealing with these issues, is Anti-Money Laundering Directives and Anti-Tax Avoidance Directive. The combined effect of both directives is expected to ensure more sustainable revenues, which will result in creating a more comfortable environment for businesses.

This thesis is going to examine the combined effect of the 5th Anti-Money Laundering Directive and new Anti-Tax Avoidance Directive on large enterprises and businesses and analyze the possible consequences in the foreseeable future. The analysis is mostly focused on how effective both directives can be as a preventative measure in tax avoidance cases.

The hypothesis of this Thesis: „The 5th AMLD and Anti-Tax Avoidance Directive will deliver the desired effect“

The research question: „Are the two directives more effective when applied together and why? What are the effects of non-compliance?

2. TAX AVOIDANCE, TAX EVASION, TAX PLANNING

The taxation has several essential functions, which allow the government to provide the population of the state with comfortable living conditions. In other words, when people pay taxes they pay for their access to education, healthcare and many other essential facilities, which the government runs. Therefore, when one person does not pay taxes he steals the money from both the government and other people living in that state. However, when the entity, which does not pay taxes, is a transnational corporation the case is getting even more serious. The corporations are looking for more ways of reducing the tax rates, which creates negative tendency for other companies. The increasing globalisation only helps to facilitate the process of aggressive tax planning for many companies and businesses.

International tax system is not flawless and transnational companies are using those imperfections to reduce their losses through escaping from paying taxes. The tax havens are one of the most common tools for this. Despite the fact that the governments of the most countries in the world are trying to limit the use of offshores, it should be mentioned that tax havens are not only a means of tax evasion. This is a serious tool that allows to solve a wide range of different tasks, such as protecting various assets or optimization in a holding structure. However, there are several features that definitely shall be taken into considering. For example, some offshore companies are more convenient to use for some purposes than others.[1]

This chapter provides the definitions and examples of tax avoidance and tax evasion and shows the difference between tax evasion, tax avoidance and tax planning.

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[1] Paulus Merks, 'Tax Evasion, Tax Avoidance and Tax Planning' (2006) 34 INTERTAX 272.

2.1 Aggressive tax planning: concept and reasons

Generally, aggressive tax planning is an action, which covers two main types of practical situations. The first case includes those situations when the position of taxpayer is rather reasonable and it is also formally consistent with law. The other side of this type of cases is that they may entail unforeseen tax consequences. In other words, tax authorities may see a danger in the fact that legislation could be applied in such ways that are not generally presumed by law and it helps to achieve the results, which are different from those that were presumed by legislation.

The completely different type of situation may occur in case if tax authorities have to face the risk that the taxpayer will not indicate or specify the fact that some kind of uncertainty or doubt in the interpretation of the law regarding some important tax law provisions exists. Sometimes the tax authorities do not agree that in particular cases such legal uncertainty actually exists, which also forces taxpayers to conceal their doubts or uncertainties of the compliance with specific paragraphs of legislation regarding tax law.

It is impossible to imagine the concept of aggressive tax planning without active participation of tax intermediaries. The role of the tax intermediaries may be performed by consulting, legal or audit companies, private consultants, different legal or tax departments or organizations. Besides tax intermediaries there are many other actors who also may be involved into aggressive tax planning. For example, those actors could be banks, different financial institutions, investment or management companies and even insurance companies. In some cases tax intermediaries may play a positive role, which results in helping taxpayers to understand the intricacies of tax legislation.[2] However, it is generally obvious that all the negative effects of participation of tax intermediaries overweight the positive ones. Some of the negative effects include the development of unacceptable agreements, which are entailing the minimization of the tax burden.

[2] José Manuel Calderón Carrero and Alberto Quintas Seara, 'The Concept of 'Aggressive Tax Planning' Launched by the OECD and the EU Commission in the BEPS Era: Redefining the Border between Legitimate and Illegitimete Tax Planning' (2016) 44 INTERTAX 206.

The main conceptual approach to aggressive tax planning is that it like any other market product or service, is due to the interdependence of the demand and supply. In other words, it is possible to state that tax intermediaries usually formulate the proposals for aggressive tax planning, while large taxpayers develop their own tax risk management strategies.[3] Large taxpayers at this case are clients of tax intermediaries. They make decisions on the use of specific tax planning schemes. Thus, taxpayers generate demand for aggressive tax planning services.

There is a number of factors, which include quite significant ones, also facilitates the emergence of aggressive tax planning. Such factors are the uncertainty of legislation and law enforcement practices and perception of the tax system as an unfair by the taxpayers and tax intermediaries.[4]

The main factors that may help to determine the true nature of the actions of tax consultants in relation to clients and tax authorities may be divided into six main groups:

i. The professional and ethical responsibility towards the client, loyalty, or actions, which are considered to be beyond the law;
ii. The presence of self-regulatory organizations of tax intermediaries, professional standards and rules;
iii. Financial and reputational risks;
iv. The structure of professional fees;
v. Professional secret;
vi. Audit standards;

As to the factors which may potentially affect large taxpayers (for example large corporations), they may include:

i. Structure and mechanisms of corporate governance;

[3] Carlo Garbarino, 'Aggressive Tax Strategies and Corporate Tax Governace: an Institutional Approach' (2011) 8 European Company and Financial Law Revenue 268
[4] Joao Dácio Roily, 'The General Anti-Avoidance Rule: Its Expanding Role in International Taxation' (2016) 44 INTERTAX 813.

ii. Disclosure requirements for financial and other information;

iii. Accounting and taxation forecasts of activities;

iv. Accounting and taxation standards;

The basic understanding of which factors generally influence the behaviour of tax intermediaries and taxpayers is vitally important for proper risk management in the development of mechanisms aimed to counter aggressive tax planning. In fact, most of the factors, which may highly influence the comfortability of the environment for tax authorities and taxpayers, includes the need to abandon the unilateral nature of the relationship between tax authorities and taxpayers, the peaceful settlement of disagreements, mutual consultations, etc. In other words, the establishment of civilized partnership with businesses (especially the large ones) is required.[5] The trilateral interaction between tax authorities, taxpayers and tax intermediaries is required. The cooperation of tax authorities with taxpayers, which is based on a constructive basis, creates an example of a successful experience from a number of countries.

At the same time, better communication allows tax authorities to receive more effective control over taxpayers and provides the possibility to response to violations more quickly. In other words, risk management is correctly built and limited resources are allocated.

It is important to notice that there are profits and benefits for the taxpayers as well as for the tax authorities. Such relationships mean legal certainty at the time of transaction, which is essential to reduce possible costs of litigation and other types of costs associated with ensuring compliance with tax law.[6] This point is extremely important for large companies.

Main problems in relationships between tax authorities and taxpayers include many different types of issues. The main ones are:

[5] Axel Cordewener, 'Anti-Abuse Measures in the Area of Direct Taxation: Towards Converging Standards under Treaty Freedoms and EU Directives' (2017) 26 EC Tax Review 60.

[6] Mirugia Richardson, 'Fighting Tax Fraud and Tax Evasion in the EU: The 2012 Action Plan' (2015) 4 EC Tax Review 220.

i. Officials are poorly aware of a particular taxpayer, their managerial structure, areas of activity. Certain collective image cannot express all the essential details and therefore it will not allow considering this specificity;

ii. Officials are very poorly informed about the quality and principles of the functioning of technological processes and the formation of accounting or other reporting systems;

iii. Officials have very limited understanding of the taxpayer's view of the law and its possible ways of interpretation of certain norms;

From the point of view of the taxpayer, there are several proposals to tax officials, which may help to create more comfortable environment for them:

i. Understanding of the essence of the taxpayers business processes, having a clear understanding of the conditions, which mark the taxpayers plans and decisions concerning their business;

ii. Consistency and predictability of actions and decisions of the tax authority;

iii. Impartiality of attitude towards the taxpayer;

iv. Proportionality and equal treatment of taxpayers, same interpretation of homogenous facts and circumstances;

v. Ability to quickly and directly interact and clarify in case in question or difficulties occur;

In this case, tax intermediaries should have a clear understanding regarding the actions of tax authorities, anticipate the interest of the tax authority in different types of information, and be aware of the nature, principles and mechanisms, which tax authorities commonly use.[7]

[7] Solange Devenish, 'Should Corporate Tax Avoidance Be Criminalised?' (2016) 6 Southampton Law Review 90.

Summarizing the possible forms of transition to qualitatively new standards of relations, there might be drafted and carried out following list of recommendations:

i. The relations may be improved through a unilateral statement by the tax authorities of their intentions to work with new rules (for example Ireland);

ii. The relations may also be improved through the joint adoption by tax intermediaries of a document which would establish the intentions of all participants to work in accordance with certain set of rules (for example Switzerland);

iii. Another tool which may be useful in establishment of better relations between actors is a concluding a formal or informal agreements between the tax authority and a specific taxpayer (for example Netherlands and USA);

Perhaps, the most attractive option for the international tax community is the creating an agreement between the tax authority and the taxpayer on mutual cooperation. Moreover, such type of agreements do not create any additional rights or obligations and they do not put any limits on the actors both in relation to the taxpayer and in relation to the tax authority.[8]

2.2 Tax evasion and tax avoidance

The concept of tax evasion may seem to be equivalent to tax avoidance, which is not completely correct. It might be difficult to see the difference between two concepts; however, this difference is quite essential from the perspective of law. In order to make this difference as clear as possible this subchapter will cover both concepts and explain in what ways tax evasion and tax avoidance are different.

First of all, any case if tax evasion involves breaking the law. Very often tax evasion includes fraud, concealment or non-disclosure, which are classified as an illegal activity. Just as any other

[8] D.A. Albergtse, 'International Tax Avoidance: An Economic View' (1984) 12 INTERTAX 470.

criminal activity, it is also punishable by criminal law. As to the tax avoidance, it is a legal activity, which is performed by a taxpayer with single goal to reduce tax burden. It is also important to notice that this type of taxpayers' behaviour is not classified as illegal activity and therefore does not constitute a criminal offence.

One of the definitions given to the concept of tax evasion describes it as a behaviour, which directly violates tax law. The reason for such behaviour is always the same - to escape payment of taxes. Generally, failure to declare the income derived legally without involving any criminal offences properly shows the intention of taxpayer to escape from payment taxes. The direct violation of tax provisions is illegal; therefore, taxpayer who failed to follow the instructions is becoming a subject to criminal law. Any illegal act performed by a taxpayer may involve quite serious offences.

Less serious offences include the non-submission of complete returns of income. These actions do not generally cause any serious problems. However, in case of fake invoices or false tax declarations the problem grows bigger and may cause serious consequences.[9] All persons who are involved into tax evasion cases face different kinds of penalties or even jail. In other words, tax evasion generally consists of acts, which can be subject of investigation, prosecution and sanctions.

On the other hand, from the perspective of law, tax avoidance is completely legal action. One of the basic definitions of this concept conclude, that tax avoidance is rather a right of the taxpayer, which allows the person to arrange their affairs in special way, which will help to pay less taxes. Very similar definition was already discussed above under the "tax planning" section. Therefore, it could be stated that tax avoidance is one of the types of aggressive tax planning.

Even though the governments consider tax avoidance as a legal action, it is still not acceptable. The reason why governments prefer to claim such practices as unacceptable is that tax avoidance

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[9] Jane G. Gravelle, 'Tax Havens: International Tax Avoidance and Evasion' (Congressional Research Service, 2015), 9 August 2017.

usually covers only those forms and practices of tax minimisation, which always lead to serious budgetary losses, distort capital flows and international competition.[10] Tax avoidance causes a lot of harm to the economy as a whole and public interest. It affects every citizen of the state without any exception. As a result, tax avoidance on a large scale affects each person, which increases number of victims who were harmed form cases of tax avoidance. The losses caused by tax avoidance generally affect the healthcare sector, access and quality of education, general security in the state and many other less significant aspects of the normal society.

Even though tax avoidance is still not acceptable by governments, it could be also defined as a special type of behaviour, which is aimed at reduction of tax liabilities, which is done accordingly to the law, but it violates the idea meant by the law. In other words, tax avoidance is legal action from the perspective of the legislation the action itself does not break the law, but it clearly does not follow the public moral. Intention of the law always follows the public moral and represents the morality of the biggest part of the population.[11] This helps to prevent people from breaking the law and accepting basic legal concepts more easily.

The problematic part is that sometimes it is hard to determine whether the action is harmless tax planning or was it harmful case of tax avoidance. Each state might have its own point of view and therefore the decision may differ from state to state. The only option to be sure is to go to court and get the legal decision, which is not the most preferred option due to budgetary losses. However, there are some cases concerning similar issues. Case *WT Ramsay Ltd v IRC [1982]* is a great example.[12]

The approach to the tax avoidance and the scheme itself under the Ramsay case has quite significant repercussions, in general and specifically for tax planning. According to the facts of Ramsay case, there was a taxpayer company, which wanted to shelter a capital gain. For this purpose the company created two separate loans for subsidiary company, which was acquired

[10] Luca Cerioni, 'The Quest for a New Corporate Taxation Model and for an Effective Fight against International Tax Avoidance within the EU' [2016] 44 INTERTAX 465.
[11] Gianluigi Bizioli, 'Taking EU Fundamental Freedoms Seriously: Does the Anti-Tax Avoidance Directive Take Precedence over the Single Market?' (2017) 26 EC Tax Review 167.
[12] Ramsay (WT) v Inland Revenue Commissioners [1982]

quite recently before the actions took place. Both of the created loans carried an interest. The taxpayer company who gave the loans reduced the interest on the first loan to 0% and doubled the interest on the second loan. After that, the company sold the loan with doubled interest to another company as a capital profit. At the same time, the first loan with zero interest was repaid at par. As a result, a capital loss, which was equivalent to the repaid loan, incurred in respect of the sale of shares to the subsidiary in another company.

The company searched for a relief from the capital losses, but instead in contended that in fact all the capital profit was just an exempt from tax because it was a debt on a security issues. The House of Lords considered that in this situation they might accept that none of the steps undertaken by the taxpayer company actually involved an illegal action, and therefore they considered this scheme as a whole. After all, they held that these actions should be considered as a nullity for tax purposes. According to the judgement of Lord Wilberforce, it is not required to consider separately each step of composite transaction, which is intended to carry through in a whole. Afterwards, the Lord highlighted and described the specific characteristics of circular tax avoidance schemes.

First, the clear and stated intention is required which shows that once the scheme started it will proceed until the end including different steps. It is also important to notice that it does not matter whether there are some contractual obligations or just expectations, which do not impose those obligations.

Second requirement states that taxpayers' financial state shall be the same as it was before the scheme was started. This means that the taxpayer does not have an obligation to use his own funds and afterwards he did not get any profit. Of course, there still might be some expenses, such as payment of the fees or payments to the promoter of the scheme.

Next characteristic is rather simple: the scheme has one single purpose of tax avoidance.

House of Lords has modified the list of characteristics and circumstances of tax avoidance according to the Ramsay. Case IRC v. Burmah Oil Co Ltd was the next step after the Ramsay. The House of Lords held in that case that the Ramsay principle is to be applied in case if the scheme is devised by the advisers of the taxpayer and if the scheme involves personal funds of the taxpayer. According to the decision of the Lord Diplock, there are several conditions, which shall be met in order to apply Ramsay principle. Those conditions include:

i. There shall be a series of specific transactions;
ii. The transactions are pre-ordained;
iii. The transactions include specific steps which do not follow any commercial purposes and which are undertaken exclusively with the purpose of tax avoidance;

In general, Ramsay principle had always been confined to tax avoidance, which only included the artificial schemes. Those specific schemes always contain the steps which make the whole scheme self-cancelling. There is another case, which made the field of application of Ramsay principle wider and broader. The case Furniss v. Dawson the Ramsay principle was applied to a tax deferral scheme instead of simple tax avoidance cases. The case also did not contain any type of circular of self-cancelling steps, which makes this case the first one to use Ramsay principle in a new field.

Before he Ramsay principle emerged, the courts had more strict way of interpretation of tax law and they preferred to avoid any deviations from their own strict interpretations, which they considered to be more correct and effective. There were many occasions when the court ruled specifically in favour of the attempts of minimisation of tax liabilities undertaken by a taxpayer. It is notable, that whilst the decisions were generally made in favour of taxpayer, the courts still did not approve tax avoidance in general.

Afterwards, it is possible to conclude that common definition of tax avoidance may help to provide more certainty and avoid legal insecurity in many cases. Different jurisdictions may have their own interpretations of the same articles and that is why common definition is extremely important to avoid any misunderstandings. After all, the governments may also benefit from a common definition because it may help to get an estimate of their real revenues and to calculate their national budget correctly.

2.3 Methods of tax avoidance on international level

There are many various organizations, which were created with a goal of reducing tax avoidance around the world. Those organizations differ from one to another and they have different member states, different objectives, different competences, etc. At international level, there was an effort to create and develop specific international taxation standards, which would fit into the context of BEPS Project, which is also discussed more closely in next chapter as well as international organizations.[13] BEPS Project developed special actions which supposed to oppose different tax avoidance strategies, especially the ones which exploit small gaps or mismatches in legislation (for example, the practices which move profits from high-tax jurisdictions to low-tax locations).

There are many different methods of tax avoidance and it is nearly impossible to list them all. The whole range of such practices is constantly developing and new methods of tax avoidance are emerging. However, most of taxpayers prefer to use more common and safe methods instead of experimental ones. Among those methods are transfer pricing, allocation of debts and earnings stripping. Even though there are much more interesting methods, this sup-chapter only discusses those common methods of tax avoidance commonly used by transnational corporations.

Transfer pricing is a method of tax avoidance, which could be described as the establishment of transfer prices, which are different from market prices and are aimed specifically at transactions between interdependent persons who are usually are both members of one holding or group of companies. Thus, transfer price is generally understood as price set in business transactions concluded between various participants in a single group of companies.[14] The purpose of transfer pricing is to redistribute total profit of a group of persons in favour of persons located within

[13] Daniela Pirvu, Corporate Income Tax Harmonization in the European Union (PALGRAVE MACMILLAN 2012).
[14] Michael P. Devereux and Clemens Fuest, 'Corporate income tax coordination in the European Union' (Oxford University Centre for Business Taxation 2009).

territories with lower tax rates. This is the most common and easy scheme aimed at minimization of tax burden, which inevitably requires more attention from any state.

Great example of transfer pricing is the transfer of rights to intellectual property or any other type of intangible property. Know-hows, new inventions, licenses, new softwares and many other types of property are hard to value from the point of view of authorities. The idea of this method is to give a licence to any intellectual property in a low-tax territory and royalties or any other types of payments are lower than real value of the property. As the result, the income is shifted.

The arm's' length principle is the standard which is aimed at regulation of transfer pricing. According to this principle, transaction prices between related parties shall reflect the conditions that would have existed between independent enterprises. In general, the main idea of the arm's length principle is an attempt to compare transactions, both controlled and uncontrolled, in terms of tax benefits and advantages or disadvantages that they create.[15]

Transfer pricing may get complicated in some cases. Some businesses may establish so-called 'dummy' companies in those jurisdictions where tax rate on profits are lower or even close to zero. Shifting profits to no-tax jurisdictions is also quite popular within large corporations. There is a method called "Double Irish Dutch Sandwich". This scheme is widely used by American corporations and is less common among European ones.

The idea of this scheme is that in some states tax rate on income derived from intellectual property (royalties) is extremely high. For example, in United States tax rate on this type of income is 35%, which imposes losses on the company. Large enterprises prefer to reduce the tax burden and are using tax planning, which is considered to be completely legal action. The biggest corporations in the world, including Google, Facebook, Coca Cola and Apple, apply "Double Irish with Dutch Sandwich" scheme.

[15] María Teresa Soler Roch, 'Corporate tax in the EU: a never-ending story? (2005) 3 EC Tax Review

The structure of the scheme allows large enterprises to save billions of EUR annually, which affects the budget of states where the corporations are located. The idea of this scheme is to create a chain of companies, which receive intellectual property rights from one to another. This chain uses two Irish companies and one company registered in Netherlands. In accordance with Irish law, a company is considered as resident of a state where its' direct management is located. Thus, a company registered in accordance with Irish law, which is currently having an office and director in another country is considered to be a resident of a state where the office and the director are located. The first Irish company is geographically located in the offshore zone, where dividends and royalties are not subject to income tax. The second Irish company is already registered and located in Ireland, but at the same time, it is a subsidiary of the first Irish company. Third company is registered in Netherlands.

This chain of companies creates a series of interactions. The original company which owns intellectual property rights and which is located in high-tax jurisdictions transfers its intellectual property rights through license agreement. The first Irish company from offshore zone sublicenses these rights to company in Netherlands. The Dutch company also transfers these rights accordingly to the sublicense agreement to second Irish company. Second Irish company directly collects profits from the use of intellectual property rights and conducts real activities. Ireland does not tax the funds transferred by its residents to some countries of the European Union, including the Netherlands. At the same time, second Irish company is obliged to pay tax only on the part of the income received from royalties at rate of 12.5%. From the Netherlands the funds are transferred to the first Irish company, which is a tax resident of the offshore zone and therefore it is exempt from paying taxes on royalties. As a result, money is concentrated in offshore zone.

In order to regulate cases of tax avoidance general or more specific anti-tax avoidance rules or procedures were drafted. One of these rules is called General Anti-Avoidance Rule (GAAR), which is aimed at reduction of tax avoidance.[16] It is notable that GAAR was one of the first projects undertaken by the Commission in the direction of fighting with tax avoidance cases.

[16] Pierre Moscovici, 'Tough Measures Needed to Reform Tax on Corporate Profits' (2016) 1 EC Tax Review 2.

2.4 Money Laundering

The process of money laundering goes beyond usual economic statistics. It is almost impossible to give even estimate calculation of the sums of money, which are not controlled by the authorities. Therefore, since there is no possibility to evaluate the situation and the scope of the problems, only rude assumptions can be made. According to the International Monetary Fund, the total amount of money laundered in the world accounts for 2-5% of the global gross domestic product. According to the statistics for 1996, money laundering was ranging between 590 billion and 1.5 trillion US dollars, which is roughly equivalent to the overall economic product of such countries like Italy or Spain.

At the initial stage of the process of money laundering, the person who wishes to use this procedure introduces his illegal profits in the financial system. This step could be done through dividing large amounts of cash into less noticeable and smaller parts, which afterwards are transferred directly to a bank account. Another variation of this process includes buying consignments of securities and sending the money spent on the documents to other bank accounts, which might be located anywhere.

After the capital has been successfully introduced into the financial system, second stage of the money laundering process, which is also called “distribution”, is starting. At this point, the one who is doing money laundering performs a series of operations on transformation and movement capital in order to distance it from the source of the profit. The capital may be transformed by buying or selling securities or the person who is laundering money may simply transfer money from one bank account to another in different banks within the whole world. The method of distribution of funds within different bank accounts for the purpose of money laundering is especially popular in jurisdictions, which are not aimed at fighting with money laundering.

At some cases, the criminal may disguise the process of money transfers under the guise of payments for different kinds of goods or services, thus making them look legitimate. After illegal money successfully passes through two first stages of the laundering process, next stage begins. The third stage of money laundering is called “Integration” and during this stage, illegal money regains its legal status. The money can be invested in real estate, jewellery or businesses.

Since money laundering is an integral part of almost all kinds of crimes it can be carried out almost everywhere around the globe. Usually criminals are trying to find more specific areas where the risk of being caught is minimal due to the poor anti-money laundering jurisdiction or of it is simply not effective enough.[17] Criminals prefer to move capital to countries with stable economies, because the ultimate goal of money laundering as a whole is the return of legal status to money, which were received by using illegal means. The place where money laundering may take place actually depends on the what stage the process of money laundering is now.

For example, at the initial stage money laundering takes place really close to the place where the money was originally received. Sometimes, money laundering may take place in the county where the source of the money is located. At the second or distribution stage, the offender chooses the financial centre in the offshore zone. It might be large business centre or world banking centre. In fact, it could be any place that provides the entire necessary financial or commercial infrastructure.[18] At this stage, the laundering money can be transferred to bank accounts in various places where the process can be finished safely without leaving a trace of the source of profit or its final destination. Finally, at the last stage of integration, the criminal may invest money in a completely different place if they were received in countries with unstable economic situation or with limited investment opportunities.

It is also important to evaluate the possible effects of money laundering on businesses. The integrity of the commercial and financial services markets is largely based on the notion that it functions within the framework of high standards of law, professionalism and aesthetics. Integrity reputation is one of the most important components of financial statements. In the money, which is received illegally can freely pass through the structure of a certain institution due to the fact that

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[17] Mikhail Reider-Gordon, U.S. and International Anti-Money Laundering Developments, 45 Int'l Law. 365 (2011

[18] Yen-Te Wu, FinTech Innovation and Anti-Money Laundering Compliance, 12 NTU L. Rev. 201 (2017)

one of the employees or directors of this institution might be bribed or in case if the institution preferred to ignore the illegal origin of the profit this institution may be suspected of active complicity with criminals and become part of organized crime. Evidence of such complicity will have a detrimental effect on the perception of other financial institutions, authorities and ordinary people.

Regarding the possible negative consequences to macroeconomics due to money laundering cases, the International Monetary Fund specifically highlights that serious changes in the demand for funds, distrust of banks, infecting influence on legal financial transactions, volatility of the inflow of international capital and the hen of currencies due to unforeseen transfers of foreign assets.

Criminals are constantly looking for new ways of money laundering. Countries with growing economic potential and developing financial centres but which are lacking oversight are potentially vulnerable because stable financial centres may introduce effective anti-money laundering measures. Criminals will use differences in the effectiveness of anti-money laundering programs as they seek to transfer their capital to countries where ineffective measures are used. Some may argue that economic development does not allow one to be too precise about the sources of attracted capital. However, putting off action is also dangerous. The longer the action is delayed, the faster organized crime is gaining momentum. As in the situation with the tarnished reputation of financial institutions, money laundering negatively affects foreign investment.[19] It is dangerous to invest in a country where the commercial and financial sectors are controlled and influenced by organized crime.

If the money laundering is not controlled by the authorities or measures to combat this phenomenon are ineffective the possible social and political consequences can be very serious. Organized crime penetrates financial institutions, establishes control over large sectors of the economy through investments, and it bribes officials and members of the government. The influence of criminal structures on politics and the economy can undermine the social fabric,

[19] . Joras Ferwerda, The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime, 5 Rev. L & Econ. 903 (2009)

moral and aesthetic norms and finally, the democratic foundations of society. In countries with economies in transition, the influence of criminal structures may hinder the transition to a democratic society. Money laundering is complexly intertwined with the activity that serves as a source of illegal profits. Thus, money laundering contributes to the spread of crime.

Money laundering is a threat to the normal functioning of the financial system; however, it can also be the weak point of the most criminal activity. In ongoing studies of organized crime, often it is information about the transfer of funds from bank accounts that allows to detect hidden capital and establish a connection between criminals and the criminal organizations to which they belong. When illegal profits are obtained through robbery, extortion, embezzlement or fraud, tracking money laundering often the only way to recover stolen funds and return them to victims. Of particular importance, however, is the targeted fight against money laundering, which allows the criminal person to be deprived of his criminal purpose, and therefore hit him in a sore spot. Without profits that can be used, criminal activity will not continue.

There are many different ways to combat money laundering, and, in fact, many governments have already established stringent regimes. The purpose of these regimes is to inform the population about this phenomenon, within both government structures and the private commercial sector, and to introduce the necessary regulatory measures for government structures dealing with this problem.

Some of these measures should include the following:

- Assign the status of crime to the phenomenon of money laundering,
- empower intelligence agencies to track, collect and, at the final stage, confiscate profits obtained illegally;
- provide the necessary infrastructure to enable intelligence agencies to exchange information with their colleagues abroad.

It is particularly important that individual governments must consider all relevant facts when developing a program to combat money laundering. They must combine judicial and financial structures with the private sector to enable financial institutions to contribute to resolving the problem. This means, among other things, that power structures must establish a system for tracking money transfers, identifying a client's identity, storing information, they should also record collusion on the part of financial institutions.[20]

Over time, criminals have shown themselves to be very inventive in coming up with new combinations in order to circumvent a certain counter-measure of the government. The national security system should be flexible enough to timely detect and respond to new schemes of criminals. Anti-money laundering measures force criminals to move to countries where these measures are ineffective. Again, the national system must be flexible enough to be able to expand the scope of countermeasures within its own country. Finally, national governments need to work with other jurisdictions, to be sure that the offender does not continue his activities simply by moving to another place where this problem is treated more tolerant.

2.5 Difference between tax avoidance and aggressive tax planning

This chapter covered many aspects of tax avoidance and aggressive tax planning and now it is possible to divide two concepts. In fact, tax avoidance, tax evasion and aggressive tax planning are similar because they all cause damages to national budget of the state where those actions took place. Negative influence of all types of actions sometimes goes even beyond state of origin and affects other Member States. The minimisation of tax burden is considered to be legal action, which allows different corporations to feel free to use these methods without any doubts. On the other hand, tax evasion involves illegal actions, which are punished by law. However, legal or illegal nature of the action is not the only criteria. There are more features, which distinguish these three concepts.

Tax avoidance includes conclusion of fake or artificial series of arrangements in order to reduce tax burden on the company. At the same time aggressive tax planning is using the hidden loopholes in legislation. Tax avoidance uses the methods of avoiding national and international tax

[20] Thomas Incalza, National anti-Money Laundering Legislation in a Unified Europe: Jyske, 51 Common Market L. Rev. 1829 (2014)

provisions. The schemes used in case of aggressive tax planning often involve tax provisions of two or more states.

3. INTERNATIONAL ORGANIZATIONS AIMED AT PREVENTION OF TAX AVOIDANCE PRACTICES

Large-scale money laundering operations are based on the experience of various countries. Since money laundering is an international issue, international cooperation has great importance in the fight against this phenomenon. At the international level, a number of projects have been put forward aimed at resolving this problem. International organizations such as the UN or the Bank for International Settlements have taken the first steps to resolve this problem in the late 80s. The FATF was established in 1989, as well as regional associations - the European Union, the Council of Europe, the United States Committee, which are struggling with money laundering in the countries that comprise them. In the Caribbean, Asia, Regional associations with similar tasks have been created in Europe and South Africa, and similar associations are planned to be created in West Africa and Latin America in the near future. This sub-chapter discusses some of these organizations.

3.1 FATF

The FATF is a multidisciplinary organization that consolidates the politically determining legal, financial and legislative powers of its member states. The FATF monitors the progress of member states in implementing anti-money laundering measures; considers and reports on new trends, technologies and measures to resolve the problem; contributes to the spread of FATF standards worldwide.

The Forty Recommendations is a comprehensive anti-money laundering instrument, which was created by the FATF in 1990, revised in 1996 and later in 2003. This document covers the judicial and financial systems and their regulation; as well as international cooperation. Based on the Forty Recommendations, each member of the FATF has formed a strong political conviction - to combat money laundering. The Forty Recommendations are considered as an international anti-money laundering program standard. A number of non-FATF countries have used them to take steps in this direction.[21]

FATF, just like OECD, has a very big impact worldwide. Almost all banks and governments consider FATF recommendations seriously and carefully. However, there still are countries that show disrespect (for example, Turkey), and there are states which do not have the resources to fulfill the requirements and recommendations of the organization, but for the rest of the world FATF is a global law.

If entering the OECD "blacklist" may threaten a bad reputation, then entering the FATF blacklist will threaten to lose all the possibilities of conducting financial transactions with jurisdictions, especially with the highly developed and wealthy countries that are at the head of the FATF. FATF created nine additional regional organizations, which are called FSRB (FATF-Style Regional Bodies) to oversee the implementation of organization standards. These organizations are APGML, CFATF, EAG, ESAAMLG, GABAC, GAFILAT (formerly GAFISUD), GIABA, MENAFATF, Moneyval.

Although the FATF consists of only 34 members, all regional FSRB organizations are managed by the FATF. Some countries are members of several organizations. FATF members are Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States.

3.2 OECD

[21] de Koker, Louis, The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework (October 1, 2013). Washington Journal of Law, Technology & Arts, Vol. 8, No. 3, 2013, 165.

After the World War II ended, economic ties between the states and the dependence of these states on each other has grown and intensified. As a result, a new international organization appeared during this period. This organization was called Organization for European Economic Cooperation (OEEC), which afterwards was renamed into Organization for Economic Co-operation and Development (OECD). The tasks of the organization included the economic integration of Western Europe and creation of a vast market without currency and tariff barriers with the elimination of quantitative restrictions on the flow of goods within it.

In the late 50s and early 60s, the logic of the development of world economic relations in international context significantly changed. For example, different international financial institutions, such as World Bank and Bank for International Settlements) became more active and their exclusive competences expanded a lot. The expansion of competences included the capital flows, the development of assistance and multilateral settlements. Therefore, due to the changes on the international level it became necessary to expand the mission of the OECD. The initiator of the creation of an organization with a wider range of activities was the United States, pursuing political goals (such as strengthening of the so-called Atlantic unity) and economic goals (such as strengthening of the influence on the European economy).

On December 14, 1960, the Convention on the Creation of the Organization for Economic Cooperation and Development was signed in Paris, which entered into force in September 1961 after its ratification by all participating States. Thus, the OECD was conceived as an economic counterpart of the military-political block of NATO, whose member states were characterized as common economic systems, high levels of economic development and the interdependence of national economies. As the context changed, the OECD has actually turned into a coordinating body for the socio-economic policies of leading industrial countries. Today, the OECD is called upon to solve economic problems within both Europe and the whole world.

The main mission of the OECD is to promote economic growth of member states and to increase their contribution to global economic growth and development as a whole, to reduce poverty in non-member states. The ultimate goals of the organization's' activities, as it was embodied in the fundamental OECD-Convention document are: ensuring high and sustainable economic growth, employment standards, living standards in all member-states, maintaining financial stability, facilitating the economic contribution of both member states and non-member states to economic development, promoting the development of world trade on multilateral and non-discriminatory basis in accordance with international obligations.[22]

The OECD member-states also have their own obligations, which include promoting the providing each other and the Organization as a whole with necessary information, to ensure the correct use of their resources, to conduct ongoing consultations, to make researches and participate in joint projects, to encourage research and education, to strive for financial stability, to take measures to reduce the barriers to the movement of capital and trade in goods and services, to assist developing countries by providing capital and technical assistance to the, and to work closely and take any agreed measures.

OECD has several central objectives, which it strives to fulfill at first. Those activities include the analysis of the state of the economy of member states and partner states, to facilitate the development of the recommendations for the implementation of economic regulation at the macroeconomic and sectoral levels.

In the framework of the OECD, it covers the following list of activities:

- almost all issues of economic development are regulated
- analysis and predictions of the trends in the economic development of individual countries are made
- theoretical and practical approaches to solving global financial and economic problems are being developed, which are subsequently codified in international agreements and treaties.

The sectors where OECD is active:

- Macroeconomics

[22] Atkinson, A. and F. Messy (2012), "Measuring Financial Literacy: Results of the OECD / International Network on Financial Education (INFE) Pilot Study", OECD Working Papers on Finance, Insurance and Private Pensions, No. 15, OECD Publishing, Paris

- Budget and tax policy
- Food Policy, Agriculture and Fisheries
- Finance and Entrepreneurship
- Trade
- Education
- Labor, employment and social issues, including healthcare
- Environmental protection
- Public Administration and Territorial Development
- Science, technology (including ICT, biotechnology) and industry
- Information, communication and computerization
- Development assistance.

Moreover, the latter area is becoming increasingly important in the activities of the OECD. In the context of globalization, the simultaneous promotion of the internal economic growth of OECD member countries and increase in their contribution to global economic growth and development, poverty reduction in non-member countries is becoming the most important priority for OECD activities. The basic principle for the functioning of the OECD is the need to provide all countries with opportunities to take advantage of the benefits of globalization and scientific and technological progress, which requires maximum openness of world markets.[23]

The so-called “BEPS Project” was developed under the OECD with the active support of the G20 countries. The essence of the project is to promote international cooperation in the fight against the tax avoidance schemes of cross-border tax planning and to the development of a set of recommendations for national authorities and their subsequent implementation in national law. Thus, the idea here is not to punish taxpayers, but to radically change the situation for main actors.

[23] Dumont, J. and G. Lemaître (2005), "Counting Immigrants and Expatriates in OECD Countries: A New Perspective", OECD Social, Employment and Migration Working Papers, No. 25, OECD Publishing, Paris,

The foundations of the BEPS Project were laid in 2012.Already in 2013; the OECD submitted its first report on this issue and proposed the so-called “Action Plan on Base Erosion and Profit Shifting” or in abbreviated form: “Plan BEPS ".

A BEPS plan consists of 15 points. Each paragraph is a description of a separate tax problem and proposed ways to solve it, which should be implemented in the domestic legislation of countries and international treaties between them. In October 2015, the OECD completed the final development of all points of the Plan and submitted a final report, which was approved in November 2015 at the G20 summit in Turkey.

It should be noted here that at the initiative of the OECD, any countries (not just OECD and G20 members) could join the BEPS plan. Such countries were invited to join the so-called “BEPS Plan Inclusive Implementation Group”. BEPS plan has 15 main proposals, which are:

- Solving tax problems and tax features in the era of the digital economy.
- The neutralization of the so-called "hybrid circuits."
- Improving the effectiveness of the rules on controlled foreign companies.
- The fight against the erosion of the tax base through the payment of interest and other financial transactions.
- General opposition to "unfair tax practice", taking into account issues of transparency and the real economic content of companies.
- Prevention of abuse of double tax treaties.
- Prevention of the use of artificial avoidance schemes for the status of “permanent establishment”.
- Development of transfer pricing rules for intangible assets.
- Development of transfer pricing rules regarding risks and capital.
- Develop transfer pricing rules for other high-risk transactions.
- Development of methods for collecting and analyzing information regarding the erosion of the tax base and the withdrawal of income from taxation.
- Implementation of rules requiring the disclosure of "aggressive tax planning techniques."

- Optimization of requirements for documentation of transfer pricing and “country reporting”.
- Development and improvement of the effectiveness of mechanisms for resolving disputes between countries on tax issues.
- Development of a comprehensive multilateral convention on international taxation in order to modify existing tax treaties between countries.

Each item of the Plan contains detailed (several tens of pages) explanations of the corresponding problem of erosion of the tax base and the withdrawal of income from taxation, as well as ways to solve this problem. Despite the fact that the BEPS Plan is a set of recommendations (which is not a legally binding document), the value of this tool is enormous. The plan will be implemented through the introduction of appropriate amendments to the law.[24] The universal implementation of the provisions of the BEPS Plan will lead to the fact that the vast majority of international tax planning schemes will lose their effectiveness, and some of them will become illegal. In the context of a significant increase in the degree of transparency, it will become much easier for tax and law enforcement agencies to identify and expose such schemes.

However, the foregoing does not mean at all that the possibilities of tax planning will be destroyed. Just in the new circumstances, the new conditions will become more stringent. In order not to run into trouble, interaction schemes with foreign companies (including using classic offshore companies) should be carefully analyzed and, if necessary, reviewed.

3.3 APGML

APGML - Asia Pacific Group on Money Laundering

APGML was established in 1987. This organization preforms similar tasks as FSRB for the Asia-Pacific region. The organization consists of 41 members: Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Canada, China, Cook Islands, Fiji, Hong Indonesia, Japan, Laos, Macau, Malaysia (including Labuan), Maldives, Marshall Islands,

[24] Ana Paula Dourado, 'Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6' (2015) 43 Intertax, Issue 1, pp. 42–57

Mongolia, Myanmar, Nauru, Nepal, New Zealand, Niue, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, South Korea, Sri Lanka, Taiwan (Chinese Taipei), Thailand, East Timor , Tonga, USA, Vanuatu, Vietnam.

3.4 CFATF

CFATF-GAFIC was established in 1992 and acts as an FSRB in the Caribbean region. Members of the group are 27 jurisdictions, including the most famous offshore destinations: Anguilla, Antigua and Barbuda, Aruba, Barbados, Belize, Bermuda, the British Virgin Islands, Cayman Islands, Curacao, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sent Maarten, Suriname, Bahamas, Trinidad and Tobago, Turks and Caicos Islands, Venezuela.

Most of the groups are classic tax havens, so on the one hand the work of the CFATF is considered very important, but on the other hand the group has been repeatedly accused of inability to be biased and not critical enough.

3.5 EAG

EAG was established in 2004 and consists of nine members: Belarus, China, India, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, and Uzbekistan.

With underdeveloped infrastructure, corruption (to varying degrees), and other major socio-political tasks of the region, its members pose significant money laundering risks, and the EAG plays a significant role in the sustainable resolution of these problems.

3.6 ESAAMLG

ESAAMLG was established in 2000 and has 16 members, which are Angola, Botswana, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

3.7 GABAC

GABAC is a frustratingly unequipped group to carry out its tasks. Money laundering is rampant in this area, but the situation is improving slowly but surely. The group was founded in 2000, and its members are Cameroon, Central African Republic, Chad, Equatorial Guinea, Gabon, and Republic of the Congo.

3.8 GAFILAT

Established in 2000, GAFILAT is an FSRB for Central and South Africa. Total 16 members of the group: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay.

3.9 GIABA

The GIABA was established in 1999 as the FSRB in charge of western Africa. The group has 15 members: Benin, Burkina Faso, Cape Verde, Ivory Coast (Côte d'Ivoire), Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. Comoros are a member of the proposal reviewer. Members like Ghana, Nigeria and Ivory Coast are the most difficult challenges for the GIABA.

3.10 MENAFATF

The youngest regional group FSRB, MENAFATF (also GAFIMOAN) was created in 2004 and has 19 members: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates (Abu Dhabi, Dubai, Ras al-Khaimah), Yemen.

3.11 MONEYVAL

Moneyval was created in 1997 as PC-R-EV, and then the name was changed to the current one in 2002. At the same time as the rebranding, the range of the group’s activities was expanded to include not only anti-laundering measures, but also measures to prevent the financing of terrorism. Having a relationship with the Council of Europe and close relations with several international organizations, Moneyval is considered one of the most profitable regional groups.

Moneyval has 34 members, many of which are influential financial centers or attractive offshore destinations: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus (excluding Northern Cyprus), Czech Republic, Estonia, Gibraltar, Georgia , Guernsey, Hungary, Holy See (Vatican), Isle of Man, Israel, Jersey, Latvia, Liechtenstein, Lithuania, Macedonia, Malta, Moldova, Monaco, Montenegro, Poland, Romania, RF, San Marino, Serbia, Slovak Republic, Slovenia , Ukraine.

3.11 EGMONT GROUP

Despite the fact that this organization appeared even before the FATF, one of the recommendations of the FATF is the creation of a Financial Intelligence Unit (FIU) in each country, which is the main body in the area of administering the implementation of recommendations. Actual performance differs from jurisdiction to jurisdiction. Typically, the FIU is an additional or concomitant authority in the crayfish of the Financial Services Commission of Jurisdiction.

In each FIU's collection, the Egmont Group meets to exchange information, set standards, and formulate common strategies. FIU is involved in the exchange of information, international cooperation and coordination between similar bodies.
Kong, India,

4. THE DEVELOPMENT OF ANTI-MONEY LAUNDERING POLICIES

The current situation within the non-resident businesses could be described as deoffshorization. The whole process is usually based on several documents and initiatives, such as FATCA, AEOI (Automatic Exchange of Information), and EU Anti-Money Laundering Directive (AML) and BEPS plan. All these tools of deoffshorization will be discussed in this chapter.

4.1 FATCA

The Foreign Account Tax Compliance Act was adopted in 2010 with a single goal to combat tax evasion by US residents. The law requires foreign financial institutions to report to the United States Internal Revenue Service (IRS) on the flow of funds from US taxpayers. To implement the requirements of the document, the Department of State enters into an intergovernmental agreement to implement the requirements of the law in the country from where the United States wants to receive reports. Organizations that ignore FATCA requirements are subject to sanctions, up to the closure of correspondent accounts in US dollars.[25]

Most often, FATCA international assistance agreements operate according to one of two schemes:

a) financial institutions transfer information about the accounts of US residents to the national tax, and from there they are sent to the US Internal Revenue Service;

b) institutions report directly to the IRS.

The importance of this law for deoffshorization is huge; the FATCA has become the prototype of the automatic exchange of information in the CRS format, which has been joined by more than 100 countries from around the world.

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[25] Dhammika Dharmapala, Cross-border tax evasion under a unilateral FATCA regime, Journal of Public Economics, Volume 141, 2016, Pages 29-37, ISSN 0047-2727

4.2 AEOI

Automatic Exchange of Information is an initiative developed by the Organization for Economic Co-operation and Development (OECD) in 2014. Its participants exchange information on accounts of non-residents (individuals and legal entities) automatically; the basis for the exchange is a bilateral or multilateral agreement. The "inspirer" of the AEOI, as already mentioned, was the American law FATCA. However, unlike it, the European counterpart provides for at least two-way movement of information about accounts of non-residents. The exchange format is spelled out in detail in the CRS (Common Reporting Standard) document, it contains technical requirements for the transfer of information, and it indicates which data should be transmitted.[26]

The process itself can be divided into three stages:

- financial institutions during the reporting period (fiscal year) collect information on accounts of non-resident customers;
- information is transmitted to the national tax service;
- tax authorities send data to foreign colleagues;

On November 22, 2018, the OECD presented the first report on automatic information exchange. The document says that 86 jurisdictions took part in the exchange of data for 2017, and, despite “some roughnesses”, the session was “very successful”.

As for the practical results of the exchange, it is too early to judge them; the competent authorities are still processing the data received. Nevertheless, the very existence of such a mechanism fundamentally changes the specifics of the work of financial institutions with non-residents.

[26] M. Sohrabi, A.R. Solaymanian, Some characteristics of the AEOI passive radon diffusion dosimeter, International Journal of Radiation Applications and Instrumentation. Part D. Nuclear Tracks and Radiation Measurements, Volume 15, Issues 1–4, 1988, Pages 605-608

4.3 AML Directives

AML directives (Anti-Money Laundering) are regulations aimed at preventing the use of the European Union financial system for money laundering. The European Parliament and the Council of Europe developed these directives.

In the European Union, the process of approving the so-called The Fifth Anti-Money Laundering Directive, aimed at tightening the fight against money laundering and the financing of terrorism. In particular, a document testifying to the increased transparency of information about the real owners of companies and trusts. The official name of the directive is as follows: “The Directive of the European Parliament and of the Council of Europe provides for amendments to Directive 2015/849 / EC on amendments to the financial system of money laundering and terrorism, as well as on amendments to the 2009 directives”. / 138 / EC and 2013/36 / EC. ” “Fifth Anti-Money Laundering Directive”.

The presence of a serial number in the name is explained by the history of the legislative struggle of the European Union with money laundering.

4.3.1 Directive 91/308 / EEC

The first document devoted to these issues was Directive 91/308 / EEC adopted in 1991 on Preventing the Use of the Financial System for Money Laundering.

4.3.2 Directive 2001/97 / EC

“Second” document was the Directive 2001/97 / EC of 2001. This document amended the 1991 directive, several extensions to its application.

4.3.3 Directive 2005/60 / EC

The next directive, which was aimed at the fight against money laundering, was the Directive 2005/60 / EC and it was officially named “On Preventing the Use of the Financial System for

Money Laundering and the Financing of Terrorism”. This directive became the “Third Anti-Laundering”, repealing the effect of the first two.

The third AML Directive contained framework provisions, presenting minimum requirements for the harmonization of national legislation of the EU Member States. This led to the fact that in different states different requirements for the verification of counterparties were set in terms of severity. As a result, the functioning of the pan-European AML legislation decreased. For example, it was envisaged that a customer check prior to acceptance for service should include a determination of the beneficial owner of the customer. Most states issued detailed rules for identifying the beneficial owner, but such rules were often absent for beneficiaries of corporate entities whose form was not known to specific legislation. Therefore, in investment funds, not a single investor, as a rule, has a 25% ownership interest necessary for recognition as a beneficiary - therefore, the administrator of the fund was not obliged to determine the beneficial owner of the fund: he did not knowingly exist.

4.3.4 Directive (EU) 2015/849

The initiative to change the third AML Directive came from the European Commission after the FATF issues new recommendations in February 2012 on combating money laundering and financing terrorism. The aim of the amendments was to unify the national AML rules, as well as extend the scope of the Directive to new entities. The circle of persons for whom the 4 AML Directive has become binding has included gambling organizers; realtors (estate agents); persons entering into transactions for the sale of goods whose price is greater than or equal to € 10,000, and settlements are made in cash.

The 4th AML Directive has legislatively enshrined the principle of risk assessment as the main principle of the work of persons who are entrusted with the duty of conducting AML procedures. The essence of this principle is to measure the degree of risk and the procedures that are carried out to prevent illegal actions. Pursuant to the 2012 FATF Recommendations, which require stakeholders to establish a process for identifying, assessing, monitoring and managing AML risks, the 4 AML Directive introduces a centralized three-stage risk assessment system.[27]

The significant role of the new AML Directive gives the cooperation of national financial intelligence units. EU member states have the obligation to ensure the uninterrupted exchange of information regarding individuals or legal entities involved in criminal activity, even if at the time of the request the type of unlawful act has not yet been determined. The principle of equivalence of the investigation at the request of the financial intelligence of another EU Member State is fixed for the investigation conducted at the national level. It is established that differences in the definitions of financial crimes contained in national laws cannot serve as an obstacle to the exchange of information. The developers of the 4th AML Directive tried to level out any national differences that could interfere with the united front of the fight against money laundering.

Tax crimes in the form in which they are defined in national laws and entailing imprisonment for a term of at least 6 months are included in the list of predicative crimes, i.e. crimes prior to AML crimes. This means that the subject of AML legislation, who knows or has reason to suspect any operation that it entails a tax crime, should refrain from committing it. At the same time, he is obliged to submit a report on a potential tax crime to the national financial intelligence unit and provide all relevant information available to him.

The Third AML Directive ignored tax crimes by obscuring corruption and drug trafficking. However, the FATF documents include, among other predicative crimes, the so-called “carousel fraud”, when goods are repeatedly resold from company to company and each time a transaction is charged, but VAT is not paid. Pursuant to the recommendations of the FATF, persons trading goods in cash were included in the list of subjects of AML legislation.

Perhaps the most significant innovation of the 4th AML Directive, which was able to affect the largest number of participants in the economic process, is the introduction of a centralized system

[27] Singer, Klaus & Bußian, Aykut & Stiegler, Tobias & Hell, Christian, 2017. "Money Laundering - Can the EU Anti Money Laundering directive change the game? Overview on the measures of the 4th Anti Money Laundering Directive," Zeitschrift für interdisziplinäre ökonomische Forschung, Allensbach Hochschule, issue 2, pages 44-48, December 2015

for storing data on beneficial owners. The EU Member States have the obligation to organize the storage of such data in the commercial register or any other public register so that information about beneficial owners is available to any interested person. A study on the actual implementation of the Third AML Directive, carried out by Deloitte in 2012, indicated that one of the main problems that subjects of AML legislation face when inspecting clients is the lack of publicly available information.

Participants in a survey conducted by Deloitte indicated that trade registries in many countries do not contain transparent information about the real owner of the client. Among the initiatives to improve the effectiveness of AML legislation, the creation of open registries of beneficial owners was explicitly mentioned. The developers of the 4th AML Directive followed the recommendations made directly from those who were to work with it. Now all subjects of AML legislation are obliged to provide information to the authorized state bodies on the beneficial owners of each client, and those, in turn, must ensure access to this information by all interested parties, including public authorities of other EU member states. The rules on the protection of personal data were dealt easily - the processing of personal data in the framework of AML legislation was recognized as performed in the public interest, which cancels the prohibition of processing such information without the consent of the personal data subject.[28]

A similar registry is introduced for beneficial owners of trusts. Trustees are required to disclose to AML law entities information about the founder of the trust, beneficiaries, trustees (if any) and other persons who exercise control over the trust. The competent authorities of the EU Member States are given the right to access such information, and in cases where the establishment of the trust entails tax consequences, the information must be accumulated in the public register.

The creation of public registries has a two-year period from the date of entry into force of the 4th AML Directive. During this time, EU member states had to develop and adopt the necessary legal acts, the texts of which will be immediately transmitted to the European Commission. The latter

[28] Niels Vandezande, Virtual currencies under EU anti-money laundering law, Computer Law & Security Review, Volume 33, Issue 3, 2017, Pages 341-353, ISSN 0267-3649,

committed to June 26, 2019, to prepare a report on the evaluation of the effectiveness of interconnected public registries of beneficial owners in all EU countries. Based on this report, further legislative initiatives will be developed.

Thus, in the summer of this year, the EU embarked on the unification of AML procedures in its member states. It was decided to strengthen the effectiveness of these procedures by posting publicly available information on beneficial owners. As conceived by lawmakers, such a measure will avoid cases of deliberate provision of false or distorted information about the client. The ban on the processing of personal data without the consent of their subject was sacrificed to the pan-European fight against money laundering and the financing of terrorism. It is clear so far that the fight against money laundering in the form in which it is expressed in the 4th AML Directive has come into conflict with the very meaning of the trust structure, which aims to maintain the confidentiality of the beneficial owner.

Obviously, the implementation of the 4th AML Directive is contrary to the economic interests of a number of states; what kind of policies they will pursue in this situation is a matter of time.

Another fundamental change concerns AML procedures for clients from non-EU countries. The Third AML Directive provided for the possibility of simplified verification of such clients if AML procedures equivalent to those established in the EU are applied in their country. Each EU Member State has approved so-called “white” lists of states with equivalent AML legislation. The lists in all states were different and, in view of the already mentioned framework of the Third AML Directive, a simplified check of clients in most cases was very conditional. 4th AML The directive radically changed the approach: now a single list of third states is formed according to the criterion of underdeveloped AML legislation (the “blacklist”) and approved by the European Commission for the entire European community. We see that this also showed a tendency towards centralization.

The simplified customer review process has also been rethought. The third AML Directive contained a number of conditions under which the client's verification automatically became optional.

The 4AML Directives are characterized by three main trends:

- centralization and strengthening of European Commission control over AML procedures carried out in each EU state;
- implementation of the principle of risk assessment, which requires decision-making based on the analysis of all available information and excludes the automatic application of certain procedures;
- creation of an open database of beneficial owners, despite the confidentiality of such information.

4.3.5 Directive (EU) 2018/843

In 2016, against the background of participation in terrorist acts, a discussion began on the need to amend the "Fourth Directive" - naturally, in the direction of tightening its requirements. By December 2017, the EU Council and the European Parliament agreed on the changes in general terms. On April 19, 2018, the European Parliament approved the preliminary text of the amendments. On May 14, 2018, they were approved by the EU Council. The signing of the document took place on May 30, 2018. Thus was born the so-called "Fifth Directive."

The rules for identifying clients and verifying the legality of the origin of capital are the things that have introduced the last two AML directives. In particular, the 2015 document unified the requirements for conducting AML procedures in each EU country and strengthened control over their implementation. In addition, the 4th directive introduced the principle of "risk assessment" by the bank when deciding on cooperation with the client, but most importantly - the document required the creation of open registries of beneficial owners.[29]

[29] Haffke, Lars and Fromberger, Mathias and Zimmermann, Patrick, Virtual Currencies and Anti-Money Laundering – The Shortcomings of the 5th AML Directive (EU) and How to Address Them (February 3, 2019). Journal of Banking Regulation, Forthcoming.

The 5th directive was adopted recently - May 20, 2018. Its' key changes are as follows:
1. Increasing transparency of information on beneficial owners of companies. Access to centralized registries of such beneficiaries will now become public.

In accordance with the "Fourth Directive", access to registered companies has the relevant authorities and "mandatory entities". Any other person could receive this information only in the presence of "legitimate interest."

2. Increasing the transparency of information about trusts and similar structures. The centralized registry of trusts will provide "information on beneficial ownership", which is also known as "beneficial ownership of the trust". "Beneficial ownership information" is usually referred to any information, which concerns the training trust, trustee, beneficiaries or any other natural person, who is providing effective control over the trust. Access to the registry of trusts will now be expanded. In addition, any other person in the presence of "legitimate interest" can obtain this information.

According to the provisions of the Fourth Directive, the register must contain relevant information only if the necessary tax consequences exist.

3. Anonymous bank safes (Eng. Anonymous Safe-Deposit Box). Their current owners must be identified within 6 months from the entry into force of the directive. In the Fourth Directive, similar prohibitions were imposed on anonymous accounts (English Anonymous Passbooks). These prohibitions will remain in force.
4. An expanded circle of "obligated entities". These will include e-wallet providers and a virtual currency exchange platform. The norms of AML directives are trends in the modern world of taxes and they will have to be fulfilled by everyone who wants to work with the European Union.

4.4 Anti-Tax Avoidance Directive

Anti-tax Avoidance Directive was first introduced by the European Commission on 28 January 2016. Economic and Financial Council adopted the Directive on 12 June 2016 and it contained set of rules aimed at fighting against tax avoidance. Specifically, the Directive proposed five anti-tax avoidance measures. It is important to notice, that the contents of the Directive is legally binding to all EU Member States.

Anti-Tax Avoidance Directive could be considered to be a reaction to digitalization and globalization, which affects the current situation within corporate taxation cases. Anti-Tax Avoidance Directive (ATAD) is directly connected with the well-functioning of the internal market. The purpose of the ATAD is to provide different states with the proper level of protection by enabling different national jurisdictions with a completely new level of protection. ATAD was part of the proposal of Anti-Tax Avoidance package, which contained specific measures aimed to fight against abusive cases of tax avoidance within the internal market. Because cases of tax avoidance and aggressive tax planning kept happening more often, the approval of the Anti-Tax Avoidance Directive was quick and easy. The reason why the approval was so important was the need to implement points of BEPS plan among the Member States as soon as possible. ATAD was supposed to facilitate the provision of pack of measures aimed at reduction of the most common types of aggressive tax planning.[30]

It is a well-known fact, that the cases of corporate tax avoidance deprive national budgets of states. Governments lose billions of euros each year. The losses usually lead to worse quality of facilities within the states and many other negative consequences. Different states may develop their own tax jurisdiction, which also leads to the situation, when taxpayer companies may use unforeseen loopholes or imperfections to reduce their tax burden. That is why the Directive focuses a lot on these issues. One of the sections of the Directive proposes that place where of origin of the profit shall be the same as the place where taxes are paid.

[30] BUYGuglielmo Ginevra, 'The EU Anti-Tax Avoidance Directive and the Base Erosion and Profit Shifting (BEPS) Action Plan: Necessity and Adequacy of the Measures at EU level' (2017) 45 Intertax, Issue 2, pp. 120–137

According to the Directive, it is imporssible to create a single well-functioning system of tax law, and that is why the Directive can only provide more broad proposals, which would fit each Member State. The process of implementation of the Directive is individual for each state and it is the responsibility of the taxpayer companies to make sure that they managed to fulfill the requirements on time. The main actors, which are mentioned by the Directive, are taxpayers, who are currently considered to be subjects to corporate taxation rules within at least one Member State. Entities, which are subjects to corporate tax law outside the Member States, are automatically fall outside the scope of this Directive.

However, the Directive still directly affects those entities, which are situated in one of the Member States, but which have permanent establishments in third countries, where they are legitimate tax residents, specifically in tax purposes are still subjects to the provisions of the Directive.

The Anti-tax Avoidance Directive is especially focused on cases of tax avoidance, because such type of taxpayers' behavior effects the normal functioning of many entities including internal market. Another purpose of ATAD was to ensure more fair and comfortable environment for those businesses, which are undertaking specific measures against tax avoidance. The Directive includes five main proposals, which are aimed at harmonization of the situation within internal market. Those proposals are:

- The interest limitation rule
- Exit Taxation
- GAAR
- Controlled Foreign Companies Rules
- Hybrid mismatches rules

4.5 Anti-Tax Avoidance Directive II

The amended version of the ATAD originally aimed at combating aggressive tax planning, with only some small amendments. New version of the Directive provides legislative propositions concerning hybrid mismatches between European Union Member States and third states. This is the main difference between old and new version of the Directive. Previous version of the ATAD only covered hybrid mismatches, which were arising only between Member States and did not cover the hybrid mismatches with the third states. That is why newer version of Anti-Tax Avoidance Directive is expected to show more effective regulations towards TNCs. The justification of amending the old version of the Directive is that most of transnational corporations and entities are still using harmful aggressive tax planning methods and keep avoiding tax liabilities.

Hybrid mismatches could be described as different treatment in terms of taxation of a company or entity under the law of two different jurisdictions. In other words, this is harmful overuse of loopholes or specific provisions of legislation, which causes serious tax avoidance consequences. In case if mismatch was detected, it is usually neutralized by adding the amount of money to the income or not allowing deducting this sum of money. Hybrid mismatches rules are aimed at prevention of taking advantages of using different jurisdictions and exploiting imperfections in tax jurisdiction of specific state. Otherwise, the companies will continue to use the mismatches in order to reduce their tax liabilities and will get benefits from double tax treaties. In order to evaluate whether there is a risk of hybrid mismatch it is required to analyse the tax treatment of a company or a specific transaction in two or more jurisdictions. In case if a case of hybrid mismatch was already neutralized by another directive or instrument, then ATAD II is not applied.

The ATAD II promotes the use of report on Base Erosion and Profit Shifting drafted by OECD. According to the BEPS plan Action 2 (Neutralizing the effects of hybrid mismatch arrangements) in order to resolve basic hybrid mismatch cases it is recommended to target those mismatches, which are coming from differences in tax treatment of different companies, entities and instruments. It is known, that BEPS Action 2 was applied often to resolve hybrid mismatches.[31]

[31] Koerver Schmidt, Peter, The Role of the Anti-Tax Avoidance Directive in Restoring Fairness – A Proper Step towards Ensuring Sustainability of the International Tax Framework? (November 24, 2019). 'Forthcoming in C. Brokelind, S. van Thiel (Eds.), Tax Sustainability in an EU and International Context, Books IBFD; Copenhagen Business School, CBS LAW Research Paper No. 1939. Available at SSRN: https://ssrn.com/abstract=3492643

The new Directive provides six more new rules, which corporations now need follow. These rules include the following propositions:

i. *Hybrid transfers*. This type of transfers presumes that there was a transfer of any financial instrument and the return received from this transfer is treated as it was derived by several parties at the same time.

ii. *Hybrid permanent establishment mismatches.* This type of mismatch happens, when from the point of view of one jurisdiction, the business is carries through permanent establishment in one particular jurisdiction, but the other jurisdiction does not agree with this statement. The problem of this situation is that the company, which is carrying business within one jurisdiction, is not taxed by it and at the same time, it is exempted for the profits, which were acquired within the other jurisdiction.

iii. *Hybrid financial instrument mismatches.* This mismatch happens, when from the perspective of taxation one financial instrument is treated in different ways within different jurisdictions. According to the ATAD II, the EU Member States are obliged to exempt some of their financial instruments latest the 31 December 2022. That is why it is not possible to provide any significant examples yet.

iv. *Hybrid entity mismatches.* This mismatch could be found in cases when in terms if tax law the same corporate entity is getting different characteristics by two or more jurisdictions. For example, the first jurisdiction may describe it as transparent and the other one concludes that the entity is not transparent.

v. *Dual resident mismatches.* The dual residence is also an important issue, which is still not regulated properly. The taxpayer is accepting the tax residence in two or more jurisdictions and this gives the taxpayer ability to deduct the sum of taxes from both jurisdictions. These actions allow reducing tax liability or even nullifying it.

vi. *Imported mismatches.* This mismatch, unlike the others, is using an indirect form, which allows importing the effect in the jurisdiction of Member State legitimately.

5. THE EFFECT OF THE DIRECTIVES ON BUSINESSES

The extensive analysis on the current developments in anti-money laundering and anti-tax avoidance sectors allows to show how exactly the directives are affecting large entities and businesses and how they were expected to work. The main Directives which were previously discussed in this thesis are Anti-Money Laundering Directive 5 and Anti-Tax Avoidance Directive II. Both directives amend previous versions and are aimed to prevent such criminal actions and money laundering, financing terrorism and tax avoidance practices. The chapter consists of two parts: the analysis of the real effects of AMLD5 and the effects of ATAD II.

5.1 The implementation of AMLD5 by Member States

Previous amendments to AMLD presumed that Member States will have at least two years to successfully implement the new rules of the Directive. After that, those states which failed to implement the Directive would have been issued with an infringement charges. However, European Commission is already drawing up specific procedures for the cases of infringement. At this point it is clear that the European Commission is considering AMLD5 as extremely important and serious tool which is expected to show its effectiveness quite soon.

Member States, which are constantly ignoring the measures proposed by the AMLD5 and which fail to comply with them will be dealing with serious consequences in the Court of Justice. The punishment for non-compliance might be greater or lesser, but in any case it is aimed at prevention of similar situations. Already on 20 February 2020 the Commission has issues several letters to eight Member States which contained recommendation to transpose AMLD5. The list of states who received these letters includes Cyprus, Hungary, Netherlands, Romania, Portugal, Slovakia, Slovenia and Spain. These states did not notify the European Commission of implementing the measures prescribed by the AMLD5 and as a result received the warning. This situation shows that the EC wants to show that the situation is serious and the measures are strict and mandatory to follow in any case.

The reason of such behavior may the need to resolve the situation with money laundering in short term and in effective way. It is important to understand that any set of rules or measures will be effective only in case of its global implementation and well-functioning. The European Commission is keeping explaining the importance of successful implementation of the rules within the whole EU because it is the only way to resolve this dangerous situation.[32]

The Commission states, that the Member States who received the letters failed to transpose the newest version of the Directive. The actions of the Commission seem to be quite urgent, which again shows that the Directive is expected to be more effective than its previous versions. The Member States are obliged to give a satisfactory response to this situation within two month and the Commission is going to control it and send the reasoned opinions to the actions undertaken within this period of time. The problematic part is that many Member States may need more time to implement the newest measures and some of the states may still have some problems with previous version of the Directive.

In practice it is possible to conclude that there are many Member States who are not putting enough effort into the fastest implementation of the rules, which is the reason why the Commission is striving to facilitate the process as much as possible. Lack of facilitation is probably one of the most important and significant problems which slow down the process of fight against money laundering and tax avoidance practices. Comparing the process of implementation of AMLD4 and AMLD5, it is possible to notice that problems which arise during the whole process are rather similar and always come from Member States being too careless. During the implementation of AMLD4 the EC was forced to launch the specific infringement processes against nearly 20 states, which shows the

[32] Pavlidis, G. (2020), "Financial information in the context of anti-money laundering: Broadening the access of law enforcement and facilitating information exchanges", Journal of Money Laundering Control,

level of negligence of the Member States. That is why such rapid and strict measures undertaken by the Commission are rather proportional and correct.[33]

It may be considered that AMLD5 just iterates on the previous Directive in many ways. AMLD4 represented more significant shifts in the European regulatory framework and the approach to the situation and that is why states may have a feeling that newer version of the Directive does not provide any significant changes. That is why many states are acting rather slowly in building the domestic regulatory frameworks which would fit into the AMLD5 provisions. Member States would rather to wait and see what happens next or even see the experience of other states, which already fulfilled the requirements or failed to fulfill them. This approach is gives a feeling of safety, which forces more states to use it. The actions undertaken by the Commission in such cases are rather effective and show the Member States that the situation is urgent and that there is no time to wait.

5.1.1 AMLD5 and crypto currencies

Even though some Member States prefer to wait and see how the situation will change, there is still a Member States which were prepared for the changes and transposed the AMLD5 into national laws with respect to the deadlines. Of course there are countries which wait until the last day before the deadline to implement everything correctly. However, until the states respect the deadlines there is no reason to punish anyone. Longer preparation period might indicate that the state is trying to implement the rules in the most delicate and correct way.

One of the provisions of AMLD5 will have huge impact on firms which deal with crypto currencies. New version of the Directive will require the crypto exchanges and the custodial services providers to register their own local regulator and show highest level of compliance, including implementation of know-your-customer concept and all AML procedures prescribed by the Directive. Besides the rising importance of KYC and obligations to provide more detailed

[33] Zilioli, Chiara, Crypto-Assets: Legal Characterisation and Challenges under Private Law (February 5, 2020). Crypto-assets: Legal Characterisation and Challenges under Private Law, in 46 ELR (2020), p. 251-266 .

reports the Directive in practice gives more power to different financial intelligence units and to the bodies which provide law enforcement procedures.

These new regulations have both positive and negative sides on the actors. First of all, it is importance to understand that the list of actors who are affected by the Directive provisions include both large entities and small businesses. The implementation of new set of requirements would not affect the larger entities due to their stability and the experience. However, the compliance to the new rules provided by the Directive would impose more costs and losses on smaller firms in the field of crypto currencies. The financial burden may force smaller firms to merge at some point. In this case the Directive puts some actors in more favorable position than the others which poses an inequality situation. Already in February some EU-based crypto currency exchange firms stated that they are planning to move their offices to the countries outside of the EU due to difficulties with compliance with AMLD5. This situation indicates that the Directive puts extremely high regulatory and cost-wise barriers. This situation has negative impact on the EU economy because each firm is a taxpayer and forcing the taxpayers to move away from the Union is not the correct behavior pattern which shows that the foundation of a company within the EU is not economically profitable.[34]

However, the AMLD5 also has positive effects. In long-term perspective the EU is going to gain more benefits from the implication of the Directive. One of the positive sides of the implication will lead to creating better image of the firms dealing with crypto currencies. Current trends show that crypto currencies are often involved into illegal activities which affect the companies dealing with them in a negative way. In case if the Directive will be successfully implicated and it reaches all the goals the situation will change. It is expected that different financial institution within the Europe will have more trust into crypto currencies which will give a great opportunity for the firms dealing with crypto currencies to function in more secure environment and attract more capital.

[34] Rose, K. (2020), "Disclosing anti-money launderers through CSR regulation – a new way to combat money laundering", Journal of Money Laundering Control, Vol. 23 No. 1, pp. 11-25

The positive dynamics around crypto currencies situation will take place after time passes, but it is important to keep in mind that crypto currencies are already in one line with traditional finances and that it is a part of the global financial system, which makes it extremely important. Even though right now crypto currencies may seem to be trend, according to the dynamics in the future it will keep becoming more important actor on the financial market.

Many Member states are already announcing new changes in national regulations concerning AMLD5. The Austrian Financial Market Authority already managed the situation and announced their virtual currencies regulatory body in Austria. Starting from the January all companies which provide business activities related to selling, issuing, transferring, trading or exchanging crypto currencies are obliged to register with their Financial Market Authority. Each company registered has an obligation to comply with the AMLD5, in particular to perform its reporting obligations.

France is also one of the states which successfully implemented AMLD5 regulations in its national regulatory framework. It is also notable that France started the preparations in April 2019. French financial markets regulator is called Autorité des Marchés Financiers (AMF) and it provided the list of the rules in December 2019. Other states which showed an example of how to deal with the deadlines and how to rule out the new regulations include Finland, the Netherlands and Germany.

5.1.2 The complexities

All Member States were affected by the Directive in one way or another. It is possible to state, that the implementation of AMLD5 have great impact specifically on those entities, whose business activities are connected with the virtual currencies. It is important to highlight that smaller entities are more vulnerable at this situation then the large ones. This leads to the situation when the biggest companies will be able to keep their business active and profitable while the smallest are forced to leave the EU. Even though each Member State is obliged to enforce the AMLD5 regulations, the Commission does not prohibit to implement even stricter rules, for example Lithuania.

It is an enormous task to implement a Directive over all Member States of the EU. Each state has its' own national legislation and may potentially have difficulties with interpretation of some points of the Directive. The process of implementation is going to take a lot of time and there will be a lot of questions to the courts. Another problem is that widely accepted norms and concepts which were developed specifically for traditional finances do not work properly with the virtual currencies. This problem only makes the situation even more complicated. Generally, anti-money laundering authorization schemes within the crypto currency situation differ from country to country. Many states have many ways of dealing with such issues which raises the level of complexities and uncertainty.[35]

The most difficult part is the registration and authorization processes, which are strictly prescribed by the AMLD5. It is rather problematic for the firms to always be aware whether they need to do a specific license or just an authorization or there is no need to take any actions at all. The Brexit also may cause uncertainties for the firms located within the UK or the firms which are somehow connected to United Kingdom. According to the UK regulations, the firms which are connected with crypto currencies are obliged to register themselves with their local regulatory body. For the UK it is Financial Conduct Authority, or shortly FCA. The firms will need to decide quickly whether they wish to stay in the UK and pay all the fees or to relocate somewhere else.

All these unclear moments could be regulated by a specific body which would have the single purpose to deal with all issues which arise due to the implementation of AMLD5. This would probably help the Member States to be more sure how to manage all the anti-money laundering issues and also allow all the businesses to get more clear understanding of the situation in general. However, the establishment of the whole new regulatory body is probably even more complicated process which will take more resources than expected. At this case, it is possible to think of drafting specific requirements and guidelines, which would allow each Member State to establish their own national specific AML regulatory body. In the current situation Member States suffer from lack of understanding of what exactly the EC expects from them.

[35] Pavlidis, G. (2020), "Financial information in the context of anti-money laundering: Broadening the access of law enforcement and facilitating information exchanges", Journal of Money Laundering Control, Vol.

Right now it is possible to conclude that AMLD5 provides too restrictive measures for the companies, which are working with crypto currencies. The importance of creating comfortable environment for these firms could be justified by the principle of equal treatment for every actor on the market. The raise of interest towards crypto currencies shows that this phenomenon is going to stay within the EU and bring profit in the future. Besides all above mentioned issues, which arise due to the extra-restrictive approach of the AMLD5 there are many other areas of concern. There are many firms which provide non-custodial wallets on a decentralized basis.

Such crypto currencies as Bitcoin and many others are designed specifically to meet the requirement to provide its users with anonymity. These crypto currencies do not require the users to identify themselves, which creates a huge field for illegal activities. This is exactly what AMLD5 is aimed at. By drafting such a restricting measures the EU admits that it cannot control the situation and therefore it decided to restrict everything which it cannot take control of. Recent researches show that most of the Top exchanges did not meet the minimum requirement of compliance with AML and KYC processes. This means that even the largest enterprises which work with crypto currencies may be in danger in these circumstances.

A huge problem is the financial side of the implementation of the Directive. Currently, there are several market leaders within the crypto exchange market. For example, there are Coinbase and Binance, who clearly dominate over the smaller firms. The market leaders like this definitely are able to survive the implementation because they have a financial base to work on the technical and legal innovations prescribed by the Directive. However, those innovations will require huge financial input, which the smaller actors on the market do not have. Another risk may affect both large and smaller companies. Many users will not want to continue to use crypto currencies due to the deanonymization. In this case many businesses will be affected.

There is a huge debate over whether the AML regulations supersede privacy. Many states have their own opinions on this point. It is important to remember that right now there is also EU's General Data Protection Regulation, which is legally different from the Directive. The Regulation is concentrated on e-privacy issues and it may cause several controversies with AMLD5 in some cases. AMLD5 has its most significant impact on those jurisdictions which allow the exchanges to operate without any regulations.

AMLD5 just like any other Directive may have difficulties with the interpretation. It is considered that the Directive is quite ambiguous, which causes numerous problems, such as different interpretation of different paragraphs and debate over which version is the correct one. The only way to work out a proper regulatory basis and exclude any misunderstandings is the development difficult and detailed country-by-country approach, which is a problematic scheme for most of the exchanges.

In addition to all above mentioned problems there is the problem with the deadlines. Even though the deadline for implementation of the Directive exists it is still unknown when exactly each state will become fully compliant with the provisions of the Directive. This creates quite long period of waiting until each jurisdiction makes an announcement that it is now compliant with the Directive.

5.1.3 The FATF effect

Right now it is possible to see that Member States are working on development of the most effective way of implementation of AMLD5. However, FATF recommendations follow similar propositions and at some point even go beyond AMLD5. For example, while AMLD5 covers only those transactions which include cash to crypto currency, FATF guidance covers crypto to crypto transactions. Some Member States prefer to implement FATF recommendations as well as AMLD5, which creates positive dynamics within the EU. This allows making slow process of implementation of legislation faster and more effective. [36]

The main difference between AMLD5 and FATF recommendations is the field of application. While AMLD5 is obligatory to apply within the EU, FATF is a global organization and its recommendations are effective worldwide. Moreover, FATF recommendations have more chances

[36] Miseviciute, J. (2018), "Blockchain and virtual currency regulation in the EU", Journal of Investment Compliance, Vol. 19 No. 3, pp. 33-38.

to strongly affect crypto businesses due to more global approach and wide range of propositions. In order to strengthen the position of AMLD5 in comparison with FATF recommendations it is necessary to show the specific impact, which AMLD5 can have on the Member States and on the economies. This goal could be reached by searching and eliminating the loopholes in the Directive and adding more specific provisions. EU cannot draft a Directive which would have global effect, but this fact also has a positive side. For example, it is easier to implement the rules for 27 States instead of 39, which will facilitate the process and five a faster feedback.

5.2 The effectiveness of ATAD II

Many states already implemented new version of ATAD in January and now it is possible to analyze how the implementation affected the situation within the Member States. BEPS Action Plan has Action 3, which calls the recommendations regarding the framework of the regulations of neutralization of the effects of hybrid instruments or entities. Most of the amendments are aimed at the transposition of the new provisions of the Directive regarding the hybrid mismatches. In general those amendments include the preventive measures which intend to exclude the possibility of tax planning transactions that may potentially cause hybrid mismatches.[37] The consequences of hybrid mismatches are considered to be harmful and therefore the measures proposed by the Directive are expected to cause positive effects on the current situation. The most common outcomes of hybrid mismatches are the double deduction.

By transposing the new provisions of the ATAD II the Member States are also potentially may reduce the level of tax evasion, caused by the use of hybrid instruments, which is a great side effect of the Directive.

5.2.1 The impact of ATAD

[37] Koerver Schmidt, Peter and Buhmann, Karin, Taxation, General Anti-Avoidance Rules and Corporate Social Responsibility (March 5, 2019). Copenhagen Business School, CBS LAW Research Paper No. 19-15.

As it was discussed above, new hybrid mismatch measures now include the transactions performed between persons in third states. Many countries already had similar regulations in their national corporate tax law, but those regulations usually are aimed at different result. For example, Latvian jurisdiction presumes that profit of the particular company shall not be taxed by corporate income tax unless the dividends are distributed instead of the model which allows taxing the profits at the moment when they are obtained. Similar scheme works also in Estonia.

The main aim of the Directive is to give a proper response to the situations when hybrid mismatches take place. The Directive presumes that this goal can be reached by interacting with corporate tax legislation of Member States even in cases when the third states are involved. The rules neutralizing hybrid mismatches are applicable only to those transactions which are made between associated enterprises. For example, the transaction includes the parent and subsidiary company, or between any other number of establishments of the same entity.

In general, it is possible to note that the EC demonstrates that it is capable of quick development of a regional approach which is based on the OECD recommendations. The anti-evasive measures provided to the ATAD make this Directive quite important and effective. The commission is planning to prevent each state from unilaterally implementing the BEPS recommendations, as this will lead to fragmentation of the domestic market. On the one hand, ATAD may be an appropriate tool for implementing BEPS measures in Europe. On the other hand, it is unclear whether the ATAD objectives will be fully fulfilled - preventing market fragmentation, compatibility with Union law and ensuring legal certainty by neutralizing hybrid inconsistencies.

The problem is that ATAD provides far too many options for national governments that will not contribute to coherence. ATAD may create a tax liability, but the question arises of the relationship between this obligation and obligations under bilateral tax treaties. Member States are obliged to implement the Directive in their national legislation and at the same time fulfill the obligations arising from the other sources. In addition, this creates a conflict between ATAD obligations and national law. Member states must implement the ATAD rules in national law, so that taxpayers can refer to the Directive. If a state loses more than it gains as a result of the implementation of ATAD, it may make adjustments to some bilateral conventions, using them for specific cases and bypassing ATAD.

Differences between national corporate tax regimes complicate relations between taxpayers and tax authorities, on the one hand, and tax authorities of different countries - on the other. In this regard, approximately equal the number of supporters and opponents of harmonization in the field of corporate taxation.[38] It is possible that EU member states need coordination of tax bases in order to fulfill obligations laid down in European treaties and directives.

The EU Court offers the Member States a wide margin of appreciation for the distribution of tax powers in order to eliminate the negative consequences in the affairs of individual enterprises. However, it behaves in a completely different way when it comes to a corporate group: the starting point for the consideration of such cases by the Court is the independent legal status of each company - members of the group. At the same time, the main tools for protecting national tax revenues were either reduced to targeted funds against tax abuse, or, conversely, overly expanded, creating an additional financial and administrative burden for taxpayers. At the same time, member states are less and less willing to provide tax incentives to corporate groups, fearing that similar benefits will need to be provided to cross-border groups. Member States, meanwhile, need maximum freedom for the implementation of the national tax policy; therefore, it is doubtful that these states will agree to further infringe on their fiscal autonomy. Moreover, in the European science of tax law there is a point of view that the decisions of the EU Court of Justice may even deepen the legal differences in some aspects of direct taxation that previously came from internationally agreed models.[39]

Fair taxation relies not so much on harmonized rates as on the ability of member states to tax companies at the place of profit creation in an effective way and in line with national legislation. The basic tax rate, as a rule, is not the reason for the withdrawal of profits. The reasons lie in

[38] Douma, Sjoerd, BEPS and European Union Law (March 15, 2017). Cahiers de droit fiscal international, Vol. 102a, Sdu: The Hague 2017, p. 65-95.. Available at SSRN: https://ssrn.com/abstract=2997424

[39] de la Feria, Rita, EU General Anti-(Tax) Avoidance Mechanisms: From GAAP to GAAR (November 1, 2019). In G Loutzenhiser and R de la Feria (eds), The Dynamics of Taxation (Oxford: Hart Publishing, 2020), forthcoming.

non-transparent tax regulations, special tax regimes and gaps in national legislation. Thus, the key to preventing corporate tax evasion is legislative reform and cooperation of Member States.

5.3 AMLD5 and ATAD II

Recent reforms seem to bring some essential changes in the field of combating tax avoidance and money laundering. AMLD5 provides more restrictive measures which are aimed at revealing more and more cases of money laundering and preventing them as much as possible. However, the research shows that the AMLD5 affects the field of crypto currencies in a negative way. The provisions of the Directive seem to be too restrictive and the desired effects do not cost these losses. In short-time perspective the Directive will destroy the crypto currency market, but in the long-term perspective it may help to change the image of this field and help to reduce money laundering within the EU.

The ATAD II provided some lesser changes in the field of combating tax avoidance. The main amendment of the Directive is concentrated on the hybrid mismatch cases. However, this Directive is easier to implement and control because many Member States already have similar regulations in their national jurisdictions. The issues regarding hybrid mismatches are critical because this tool is one of the most common within the tax avoidance practices. Therefore, the changes are required. The relations between taxpayers and tax authorities are also getting more complicated and therefore need harmonization. Right now, it is too early to see the real impact of implementation of ATAD II, but according to the researches, it is going to have more positive effects than the implementation of AMLD5.

6. RECOMMENDATIONS

The main purpose of application of two Directives is the reduction of level of tax avoidance and money laundering within the Member States. The analysis showed that even though the Directives have similar target, the application of AMLD5 brings more negative effects then the application of ATAD II. Therefore, the harmonization is required.

In case of AMLD5, the main problem is that smaller businesses are suffering from too restrictive measures. Therefore, it is required to provide different approach to different businesses. This recommendation is difficult to apply because it is extremely burdensome to divide the businesses to vulnerable and normal. However, this will help to keep many small companies within the EU, which will make EU even more attractive place for other businesses.

In general, the EU is struggling with dealing with crypto currency sector because this phenomenon is new and unexplored from the legal point of view. However, if the EU wants to get full control over crypto currency market the most effective decision would be creating single crypto currency, which the EU will run on Union level. The only problem with this solution is that it is against EUs' values. Total control over the crypto sector is not going to be accepted by people because one of the most important values proposed by the EU is freedom. Therefore, this solution is also not suitable.

The ATAD II provides lesser changes and therefore it's' effects are going to be less noticeable. At least it is easy to implement and many countries already have the existing framework with similar rules. Overall, after time passes it will be possible to give more precise evaluation. Now it is possible to predict that the combination of more restrictive Directive with less restrictive will harmonize each other and therefore allow to reach better results.

CONCLUSION

The purpose of this thesis was to analyze how the governments of different states manage tax avoidance and tax evasion issues. First chapters were dedicated to the main terms and definitions, which are essential for understanding of the problem. The tax avoidance is a destructive type of behavior, which damages the society on both global and personal level. It was proven, that single tax avoidance cases bring critical harm to the economic and social state of the country where the case of tax avoidance occurs. The difference between types of tax avoidance were also discussed. One of the most important points of this thesis are dedicated to money laundering, and therefore this issue was also broadly discussed.

Due to the growing significance of the problem, many international organizations were founded to develop methods of reducing the tax avoidance cases. Those organizations were properly discussed it the thesis as well. The analysis of the existing ways of dealing with the issue can help to see the real impact of those organizations and to develop measures that are more effective afterwards. Currently there are two main documents that are aimed at fight against tax avoidance. Those documents are 5th Anti-Money Laundering Directive (5AMLD) and Anti-Tax Avoidance Directive II (ATAD II). The extensive analysis of two Directives showed that even though they both are new and many Member Stated did not yet introduced proper implementation measures on national level in long-term perspective they are going to bring the desired effect.

At the current moment, Member States are working on the implementation and this process may take many month unless they will start working. The research showed, that the implementation of fifth Anti-Money Laundering Directive it going to bring a destructive effect on small businesses, which are dealing with crypto currencies. The measures proposed by the Directive are too difficult to implement and therefore many businesses will not be able to carry all financial losses. One of the most logical ways oh harmonization of this problem is the dividing the large enterprises from the smaller ones. This will allow to give smaller companies to be able to keep working after the successful implementation of the Directive. However, from the point of view of the large corporations this will be a discrimination. It is impossible to draft a single set of rules, which would fit every actor and be effective. At least one actor is going to suffer.

The Anti-Tax Avoidance Directive II is different from AMLD5. This Directive follows the ideas of the previous version and provides lesser changes. Therefore, it was easier for many Member States to implement it. It AMLD5 affects the crypto sector, ATAD II is mostly focused on changes in hybrid mismatches cases. This Directive is more harmonized and in perspective, it is going to bring improvements to the current situation without greater damages. At this point, it is possible to conclude that two Directives are focused on different matters, but because one Directive is stricter and another one is easier to apply it seems that the combination is going to have a good impact on the Member States. In case if both Directives were too strict, it would have effect that is more destructive than the current one.

The governments have to decide, whether they want to try to satisfy everyone or not. In case of too harmonized approach, the measures are going to be ineffective and useless. In case of extra restrictive measures, nearly no one will be able to implement them. Therefore, it is necessary to predict the probable effects of the implementation of the Directive from the point of view of as many actors as possible.

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