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EVALUATION OF THE EFFECTS OF INTERNATIONAL TAX PLANNING

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In this paper, the effects of the essential instruments of tax planning related to the effects of the deferral of the repatriation of international income, the effects of the reallocation of international income and the effects of the current and perspective reform tendencies in the EU member countries on the achievements of international tax planning in the Republic of Serbia are valorized. By a meaningful restructuring of its global business transactions, a transnational corporation can gain an „extra” reduction in the effective tax burden, compared to the level of the tax burden standard, overlooked within the officially established procedure of international tax planning (OECD). As long as there are differences in the corporate income tax rates among the countries, there is a realistic incentive for TNCs to locate their income in low-tax countries and their expenses in high-tax countries. The actual reform tendencies in the EU have a two-sided influence on the achievements of tax planning in the Republic of Serbia, in the form of activating non-tax instruments for an improvement of the competitiveness of the Serbian industry as well as in the form of prolonging international pressure on the budget of the Republic of Serbia.

Keywords: international taxing, international tax planning, transnational corporation, repatriation of international income, reallocation of international income

JEL Classification: H25, F23

INTRODUCTION

Globalization is the process of spreading a business activity beyond national borders. Transnational companies (TNCs) and multinational companies (MNCs) „are unfamiliar with” national borders, and they perform cross-border operations at a multinational level. International taxation, i.e. the corpus of the rules regulating the taxation of the income of a foreign

source of a resident and the domestic income of a non-resident, was inspired by the mitigation and/or elimination of international double taxation existing because of the conflict between the resident country of a TNC and the destination country of the capital over the allocation of the tax „loot”. The parent company registers the headquarters of its central management in the resident country, while, through its subsidiaries, it realizes cross-border operations throughout the world. The realization of business operations generates the overlapping of competencies between the nations involved. Which national jurisdiction is eligible to tax the international tax base (international income); what

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segment of the international tax base and at what rate? This question is raised in the ambience of global tax disharmony, i.e. in the ambience of various national systems, methods and principles of the taxation of the corporate sector. The tax disharmony affects the efficiency and fairness of international taxation, but also presents the basic assumption for the activation of international tax planning by a TNC (MNC); in other words, we mark the fact that the disharmonies of the actual procedure of international taxation and international tax planning are the complementary contents.

The subject of this paper is international tax planning, i.e. the allocation of the global tax transactions of TNCs or MNCs in order to achieve the minimum amount of paid taxes; in other words, to achieve maximum net income at the TNC (MNC) level. The instruments and scope of tax planning oscillate first of all depending on the character of the registered activity of the TNC (MNC) and the characteristics of the organizational structure, i.e. the residence of the central management and the tax authenticities of the countries where the subsidiaries are located.

The key initiators of analytic dilemmas in the area of disharmonic international taxation are:

- the repatriation of foreign-source income in the country of residence, when the moment of repatriation is a problem, and
- the act of allocation, i.e. reallocation of income and costs to different cross-border destinations, when the combined application of the transfer price is a problem, i.e. the price one dependent entity charges to another one for intra-company transactions within a TNC (MNC), and the corrective „arm's length" principle, i.e. the principle of taxation hypothetically treating intra-company transactions, transactions among related domestic and foreign entities, as transactions among unrelated entities.

This paper is aimed at presenting the results of the research in the area of the three central questions: How does the moment of the repatriation of international income affect the volume of a tax burden of TNCs (MNCs)? How does the reallocation of international income affect the volume of TNCs (MNCs)? How do

the actual and perspective reform tendencies in the EU member states affect the range of international tax planning in the Republic of Serbia?

Based on the description of the subject and aim of the research, the three basic hypothesis were formulated:

- H1 : There is an invert relation between the period of delaying the repatriation of international income to the parent TNC company in the country of residence, on the one hand, and the effective tax paid by the resident TNC, on the other.
- H2 : The intensity of the international reallocation of income is in the function of the size of international differences in the statutory tax rates of corporate income tax.
- H3 : When taxing transnational corporations, i.e. their subsidiaries, each redesigning of corporate income tax in the destination country must be observed integrally with tax effects in the TNC countries of residence.

For the purposes of conducting the research into the effects of international tax planning, the standard methodology, favored by respectable institutions and professional authorities, is utilized. For the purpose of the valorization of the TNC target function, the model of the present value of net income, tax expenses and tax savings is used (Hyman, 2011, 199; Schreiber, 2013, 27-32; OECD, 2014, 1-7). With respect to the procedure of the analysis and/or correction of transferring prices, the representative traditional method of the comparable market price is relevant (OECD, 2010b, 64; UN, 2013, 196-197; Službeni glasnik Republike Srbije, 61/2013, 8/2014, 5).

The paper is structured into eight parts. The second part of the paper discusses the description of the genesis of the key events, the state and perspective tendencies in the domain of international taxation. In the third part of the paper, the performances of the alternative systems of international taxation are analyzed together with those of the methods available for mitigating or eliminating international double taxation. In the fourth part, the methodology used in valorizing the effects of international tax planning is presented. The fifth, sixth and seventh parts of

the paper contain the results of the research into the effects of international tax planning, respectively related to the effects of delaying the repatriation of international income, the effects of the reallocation of international income and the effects of the current and perspective reform tendencies in the EU member states regarding the range of international tax planning in the Republic of Serbia. In the eighth part of the paper, the conclusions are presented.

THE GLOBAL TAX LANDSCAPE

Commenting on the international tax content during the first decades of the new millennium, the equivalent for the world tax system is the world tax disharmony. The international taxation procedure „rests” on the three fundamental conceptual-methodological pillars. The first pillar is valorization: international economic activities can be valorized. The second pillar is identification: transnational and multinational corporations and their globally located subsidiaries can be identified. The third pillar is theory: taxes can be charged in accordance with the flows of the economic activity on the territory of a particular country. Where is a value added formed? How should a fair share of the international tax base be operationalized between the countries whose rights to taxation overlap?

The OECD Convention Model on Income and Capital Taxation, Business Profits (Article 7) and Related Enterprises (Article 9), favors the combination of the separate taxation method and the following ALP principle, as an international standard for the allocation of income among domestic and foreign subsidiaries in the given MNC/TNC (OECD, 2010a; 2010b). However, the method is essentially approximate and often completely unusable. According to the unique analysis of the implications of the ALP principle (Devereux & Keuschnigg, 2009, 31), ALP prices are systematically different from the prices of independent entities, which is the indicator of the presence of tax evasion and international double taxation. The application of the ALP endangers the business activities of TNCs/MNCs, reducing the capacity of the borrowing and investing of foreign subsidiaries; it also disturbs the choice of the form of organizing investment

performance on the world market. Although the ALP increases public revenue in the country of residence of the parent company, the bigger loss of welfare is in the country where its subsidiary is located, i.e. in the capital destination country.

Almost simultaneously with the EU (European Commission, 1998), the OECD identified the key factors of „harmful tax competition”, i.e. aggressive tax planning (OECD, 1998, 25-35). During the first decade of the new century, the OECD was recognizable for its request to revoke preferential regimes for entities in the area of financial services. Concerning the character of the problems on the agenda today, the OECD reactivates the solving of the four central issues that were in their initial phase in 1998, but in the meantime, they have evolved with certain „new” issues which both dynamic globalization and technological-tele-communicational development are responsible for:

- establishing coherent international taxation of corporate income;
- the complete renewing of the effects and benefits of the international standards;
- ensuring transparency, including the promotion of certainty and predictability; and
- from the point of view of the harmonized tax rules, a quick implementation of tax measures is necessary (The OECD structured the four central aims into fifteen sub-central aims, the solving of which was postdated September 2014 and October 2015, OECD, 2013a, 3; OECD, 2013b, 15-25).

Permanently actual are the questions of tax avoidance. The OECD and G-20 of the developed nations marked the countries of „tax haven” and grouped them precisely according to their respective geographical location (Gravelle, 2013, 3), whereas the unique tax position of Switzerland has not been emphasized at all until recently. The federal rate in Switzerland is 8.5% of net income. The combined cantonal and local rate varies from about 12% (Lucern Canton) to 24% (Geneva Canton), with the average rate of about 18%. The key particularity is the tax incentive for holding companies (qualified companies only pay the federal tax of 8.5%, Deloitte Touche Tohmatsu Limited, 2013,

2; 6). This concept emphasizes the international competitiveness of Switzerland, shown in the form of the relocation of the headquarters of not just American MNCs in Switzerland (Foster Wheeler, Philip Morris, Transocean, Tyco International, Weatherford) but also the headquarters of the EU MNCs (Amgen, Cargill, Chiquita, E-Bay, Kraft Foods, McDonalds, Monsanto, Pfizer and yahoo; Steimle, 2014, 3).

International taxation is not operated by multilateral agreements but it is rather dominated by bilateral agreements: that *per se* point out to a limitation, the localization of international cooperation, and are complement to the crown international rule saying that there are no consistent rules of international taxation. There are national tax principles, which are then applied to international activities. Not only do harmonized pragmatic rules precede the principles of international taxation but their results must be acceptable for all respectable countries, i.e. the rules must be in accordance with the „big boys' rule" (Bird & Mintz, 2003, 426).

There is a „flood" of intangible assets on the global market. Only a year after the key and still valid documents of the OECD (OECD, 2010a; 2010b) had been passed, the official justification, authorized by the Director of the Center for Tax Policy and Administration of the OECD, Caroline Silberztein, was stated, saying that the question of dematerialization was far from a definite solution (Silberztein, 2011, 3):

„Numerous specific questions for intangible assets stayed aside in the revision of the OECD Guidelines for the applications of the rules of transfer prices for multinational enterprises and tax administration from 2010. The complexity of the problem leads to monetary important misunderstandings about the transfer prices all over the world, with the risks of either double taxation or the absence of taxation".

Since the business has stepped into the „digital economy" and begun the realization of „e-commerce", the meanings of the terms: valorization, identification and territory were approximately defined. The visualization of the reality shows that the fundament of the actual world tax content has been sinking.

Commenting the twenty-eight national tax systems of the European Union in the interval of the first decades of the new millennium, the description of the tax situation in the EU as a tax disharmonized one is not a surprise, nor does the fact surprise us that institutional and business leaders keep looking for a way to a more efficient, supranational, European mode, according to the treatment of a group of related entities, which realizes and integrates business across the EU, as a „European TNC/MNC", not as Dutch, Italian or Austrian corporations, for example, operating as a separate entity in the remaining EU member states.

In order to describe the European landscape for the tax reform, the variations in the rates and first of all in the corporate income tax bases are so big that it is impossible to recognize the common denominator between the central elements of the base. The thirteen new member states have reduced the average level of the rate but they have also increased the variations in the income taxation systems.

The European Union is moving in a new, Anglo-American, tax direction, reasoning that: by using only one, i.e. European set of tax rules, a transnational (multinational) European Union corporation should only count one, i.e. European, tax base, the Common Consolidated Corporate Tax Base („CCCTB"), which would then be allocated among the member states where the subsidiaries of the European multinational corporation are located, according to a predetermined formula for such allocation. At the same time, like a sample solution, the flexibility of the system is reflected through leaving it to the twenty-eight nations to make decisions on the tax base, with certain member states autonomously establishing and applying them to their share in the total income of the multinational corporation made at the level of the European Union.

Why has the reform course from separate to unitary taxation been slowed down? Because change was radical since it represents splitting up with the hundred-year-old European tax tradition, and complex. The methods of taxation are imperfect surrogates of the ideal hard to obtain both in theory and in practice. For a business to unitarily be integrated, there must be a value flow among the related entities; however, such a value flow is not an easy one to follow along the non-transparent corridors of the European and

the world tax systems, especially because of the non-withering tendency of the corporate management towards tax planning, proving their inventiveness and expert superiority related to tax offices and their threatening actions with respect to control auditing and monitoring.

The traditional European method, the method of separate taxation, requires from a resident transnational (multinational) company to count a separate tax base in each member state of the European Union for each foreign subsidiary within the related group, but in such a way that each of such foreign subsidiaries is an independent entity independently operating on the European Union market, where they fall into the normative trap of their own normative protocol.

The unitary taxation method requires from the resident multinational corporation to establish and allocate a single tax base, according to the shares that dependent subsidiaries make in the total business activity, where such shares are demonstrated by the triad of criteria, its own size of the available assets, engaged labor and trading income (European Commission, 2011, 49).

Where are the source of and a motivation for the implementation of the new reform idea? Unitary taxation is a completely new method for the EU as an economically integrated whole. However, Spain used unitary taxation until the middle of the 20th century, in order to tax foreign enterprises. Germany utilizes the formula method for its local tax in the area of trading, the so-called „local trade tax” (Schon, 2010, 78). The European Commission sees the Anglo-American approach to the taxation of, in this case, the multistate corporations of the USA as a logical direction of the development of the taxation of transnational (multinational) corporations in the European Union (for more about the specific features of the tax systems of the USA and Canada, see: Repetti, 2010; Arnold, 2010). Why? The tax history of the USA and Canada illustrates that, by adopting the „new” method, they have successfully solved the typical „old” tax problems, namely: (a) the multiplicity of the tax systems, 50 state systems in the USA, or 28 national systems in the European Union; (b) a lack of compensation for cross-border losses; (c) the eliminating of the need to precisely determine transfer prices for intra-company

transactions, which, as we will see, are the Achilles heel of separate taxation.

The disharmony of international taxation is a matrix for formulating the basic presumptions of this paper:

- there is an invert relationship between the postponing period of the repatriation of international income in the parent TNC in the country of residence, on one hand, and the effective tax paid by the resident TNC, on the other;
- the intensity of the international reallocation of income is in the function of the size of international differences in the statutory rates of corporate income taxes; and
- when taxing transnational corporations, i.e. their subsidiaries, each redesigning of corporate income tax in the destination country must be observed in integration with the corresponding tax effects in the TNC's countries of residence.

INTERNATIONAL TAXATION SYSTEMS

National companies verify their business affirmation within the borders of the country, which is the multidimensional limiting factor of maximizing the present value of net income. „Local” enterprises are not, among other things, eligible to the corpus of tax preferentials, which is an exclusive privilege of the standard procedure of international taxation. TNCs and MNCs primarily realize their business operations on the integrated world market of goods and services. Parallel to alluring macro- and microeconomic benefits, the catalyst of international business performance is often of tax provenances, because of desirable consequences for investments, net income and the „trade name”. What is in the focus is the responsiveness of the central management of a TNC to a different corporate income tax design in various countries, to the disharmony of international taxation.

Transnational corporations and their subsidiaries account for „a group of related companies”. Related entities are originally characterized by formal independence since subsidiaries formally function as independent economic entities in destination countries

and by factual dependence, because of the factual convergence of economic aims and the power of decision making projected by the central management of the parent entity in the country of residence (all the forms of organizing related companies with mutual participation in the capital are included in the status forms of concentrations, characterized by expansiveness and spreading beyond the borders of the country; Službeni glasnik Republike Srbije, 36/2011; 9/2011, Zakon o privrednim društvima čl. 550, 551). Globalization, as the synonym for an increase in international trade, flows of capital, work and income, practically means that companies are tax payers of various countries. In the open-economy environment, the overlapping of national tax jurisdictions and competences emphasizes a big question of eliminating and/or mitigating international double taxation.

Who has the right to tax the income of certain companies dispersed all over the world? The global tax content is disharmonic because there are two alternative systems of international corporate income taxation and four alternative methods of eliminating/mitigating international double taxation. The first one is a global system based on the concept of the world income, meaning that the country of residence is the one to have the right to tax the total, „world” income of resident corporations, regardless of the fact whether such income originates from a domestic or a foreign source. The second one is the territory system, which, based on the concept of destinations, means that the resource country is entitled to tax the total income generated within its country borders, regardless of the fact whether the recipient of such income is a resident (i.e. has its headquarters) in the territory of that particular country or outside its territory. During the international process of the taxation of the corporate sector, each country can have two opposing tax-investment roles: the role of the country of residence and the role of the destination country.

Although countries show a tendency to accomplish the standard aims of the tax policy, which first of all is to build a fair tax system and accomplish an efficient international allocation of capital, in the context of maximizing the world or national income, they vary in the ways and criteria used for making such accomplishments. Because of that, international taxation overshadows the imperative

of the coordination of the national taxation rules. How can a country of residence react to the previous tax of a destination country in order to eliminate/mitigate international double taxation? There are four available methods (1-4), the first of which is important for the purpose of this paper, because it is present in the practice of certain countries (the USA, Japan, the UK, Ireland, Serbia, for example; Russo, 2007, 65). Firstly, the country of residence can approve „a foreign income tax credit” paid in the destination country, in a full or partial amount, by means of which it recognizes foreign tax as its own. This method is based on a professional argument that, from an international point of view, tax fairness implies that the foreign tax of the destination country is equally worth to the domestic tax of the country of residence.

Secondly, the country of residence can exempt foreign income from the taxation process, by means of which it practically waives a possibility to tax repatriated income tax. Thirdly, the country of residence can forbid any deduction of the previously paid foreign tax in the destination country, and apply its own tax to repatriated foreign income on the gross base, net income increased by the tax of the destination country. Fourthly, the country of residence can charge its own tax on repatriated foreign income on the net base, considering such foreign tax as a „deduction” from the tax base. This method is based on a professional argument that, from the national point of view, the foreign tax of the destination country represents an expense for a resident tax payer.

THE METHODOLOGY

Transboundary business transactions are treated through the two alternative systems of international taxation which can be operated by the four alternative methods (1-4), for the purpose of avoiding international double taxation. What is important for this paper is the global system of international taxation and the method of foreign tax credit.

A transnational corporation (TNC) is a corporation performing the international business activity in several different countries at the same time. For the purpose of this paper, the important one is a

transnational corporation constituted of one parent company, i.e. one central management in the country of residence (PCR), and one foreign subsidiary, i.e. one formally independent company, because it operates in compliance with the laws of the foreign country in which it was founded, complying to the laws of the destination country of capital (FSD).

The central management of the transnational company applies the common business strategy on the common world market, including the domestic market in the country of residence. The target function of the TNC is the structuring of transactions with the aim to maximize the present values of net income at the transnational corporation level. The tax system is non neutral, because tax is a factor of business decision making; in other words, the valorization of the present value of net income must incorporate all the business expenditures and business incomes, including tax costs and tax savings as the results of international tax planning. The present value of net income at the TNC level and/or at the level of its constituents, PV_{NI} , as the indicator of the present value of the business result after paying corporate income tax, is established according to the following formula (Hyman, 2011, 199; Schreiber, 2013, 27-32; OECD, 2014, 1-7)

$$PV_{NI} = \sum_{t=0}^n \frac{NI_t}{(1+i)^t} \quad (1)$$

where PV_{NI} is the present value of net income, NI_t , made on the world market during particular fiscal years, t , for the observed period of n years. The counting of the present value of net income is based on the standard presumptions of the financial analysis of the non-existence of the fluctuation of the business risk in the function of the time component, so that the discount rate, i , is constant during the observed period and is 5%.

The concept of transfer prices has three different functions (Schon, 2012, 47). First, from the point of view of realizing the TNC's business activity, transfer prices are used for counting the intra-company transactions, i.e. the transfer of assets, and for forming obligations based on the value of the acquisition and sale of business results within a group of intra-dependent companies located all over the world. Second, from the

point of view of international taxation, transfer prices combined with the ALP serve to allocate international income amongst dependent companies within the parent TNC, on the one hand, and amongst foreign countries in which the subsidiaries are registered, on the other. Third, from the point of view of a tax jurisdiction, transfer prices are the starting point of the procedure of the prevention of tax avoidance/evasion. For the purpose of this paper, the respectable ones are the first two functions of transfer prices.

The „arm's length prices" (ALP) are an exogenous variable. Each chosen method for the analysis of transfer prices must, as its final effect, have a reasonable evaluation of the results in accordance with the „arm's length" principle. For in the purpose of the procedure of the analysis and/or correction of the transfer prices carried out in this paper, the relevant method is the representative traditional method of the comparable price on the market (OECD, 2010b, 64; UN, 2013, 196-197; Službeni glasnik Republike Srbije, 61/2013; 8/2014, 5).

THE EFFECTS OF POSTPONING INTERNATIONAL INCOME REPATRIATION

According to the global system, the parent corporation pays corporate income tax in the country of residence, regardless of the fact where such income has been earned. The tax paid by a foreign subsidiary in the destination country can be credited against the tax liability of the parent company in the country of residence. This solution is based on a professional argument that, because of the available foreign tax credit, national and transnational corporations bear the same corporate income tax rate, the corporate income tax rate of the country of residence, completely independent of how a transnational corporation located its subsidiaries in the country and abroad. However, national and transnational corporations do not bear the identical tax rate. International tax planning, which can ensure a double tax benefit for a TNC, i.e. an increase in net income at the level of a TNC, are immanent in the procedure of international taxation: based on the postponing of the repatriation of international income and based on the reallocation of international income.

Can, in real life, the parent corporation from the country of residence use its own foreign subsidiary in the destination country as a „tax shelter“ from its own tax administration? The first tax advantage of the transnational organizational form stems from the authentic conceptual characteristic of the credit method that enables a legal possibility of postponing the repatriation of foreign income in the country of residence. A transnational corporation, a group of related entities, consisting of one parent company in the country of residence (PC_R), where it has paid 30% of corporate income tax in the current year (2014), and one foreign subsidiary (FS_D), which pays 10% of corporate income tax in the destination country on 1000000 monetary units (m.u.) of income generated in the current year 2014, are the subject of our analysis. How big is the isolated tax effect of the five-year postponed repatriation of foreign income? To be precise, how much is corporate income tax in the country of residence in the case of the five-year postponing of the repatriation of the generated income, i.e. the postponing of such repatriation until 2019, for instance, compared to the amount of the tax that the TNC would pay in the country of residence in the case of the repatriation of the foreign income of the current year (2014), with a 5% discount rate? The country of residence reacts to the previous tax of the destination country by approving a „foreign tax credit“ in order to eliminate (mitigate) international double taxation (Table 1).

A transnational corporation is interested in spreading its business activities beyond the national borders of its own country because of the possibilities of tax planning. When a foreign subsidiary earns net income abroad, such „foreign income“ is not considered as a part of the country-of-residence income, until the parent company decides to repatriate it. However, by reinvesting the foreign subsidiary's income in the destination country, for instance, the parent company can endlessly postpone the paying of corporate income tax in the country of residence. Tax planning in the form of postponed taxation ensures tax reduction for a TNC. In the analyzed example, because of the five-year postponing of the foreign income repatriation in the country of residence, tax is reduced by 43200 m.u. Does the official procedure of international planning ensure the central management the following yet conceptually-methodologically unforeseen and

unintended strategy of the expatriation of income; is it complementary to the target function of TNCs? In the ambience of the global system of international taxation and the foreign tax credit method, the standard result of the officially established procedure of international taxation is the effective rate of 20% (OECD). However, by the restructuring of investments in the direction of maximizing the present value of net income at the level of transnational corporation, as the target function, the TNC additionally reduces the effective tax burden to 15.7%. We have noticed that there is an invert relationship between the length of the postponing repatriation period of the foreign subsidiary in the parent corporation, on the one hand, and the effective tax that the resident parent corporation (TNC) pays, on the other.

When, in real life, can a TNC's postponed taxation be manifested in the form of the reduction of the tax burden in the country of residence? Tax reduction is only possible if the income of the foreign subsidiary in the destination country is taxed at a lower tax rate than its counterpart rate in the country of residence, i.e. in the circumstances of a credit deficit. Why is it so? Because the volume of a credit limit for foreign tax is determined by the country of residence. In the opposite case, when the tax rate in the destination country is higher than the tax rate in the country of residence, the foreign tax of the destination country is higher than the credit limit, i.e. it is higher than the amount of the foreign tax which the country of residence wants to credit, which brings the parent corporation into the position of a credit surplus. What does „excess“ practically mean? The only tax for the parent company based on foreign source income is the tax that the foreign subsidiary paid in the destination country in the year which such income was generated in. Credit surplus, a difference in the corresponding tax in the country of residence and the tax in the source country, can be used by the parent company by carrying backward to the previous tax years, or forward, into the following tax years, when there is a possibility that a credit deficit will appear. Low taxes in the destination country are a strong agent for the activation of international tax planning, the postponing of the foreign income repatriation in the country of residence (the presented tax scenario is very similar to the tax advantage that the income of capital

Table 1 The valorization of the effects of postponing the repatriation of international income on tax reduction at the TNC level

Description	The sum of income or tax (in monetary units)
Corporate income tax in the destination country in the current year (2014)	
1. The income of a foreign subsidiary, FS_D , generated in the destination country	1000000
2. The statutory tax rate in the destination country	10%
3. The income that the FS_D pays in the destination country in the income generating year (1000 000 x 0.1)	100000
The corporate income tax in the country of residence in the case of the repatriation of income in the current year (2014)	
1. The corporate income tax base	1000000
2. The foreign income repatriated in the parent company, PC_R	900000
3. The statutory tax rate in the country of residence	30%
4. The tax credit paid in the destination country	100000
5. The tax the PC_R pays in the country of residence in 2014 $[(1000000 \times 0.3) - 100000$ of the foreign tax credit]	200000
The comparative review of the effects of the current and postponed repatriations of foreign income in the country of residence	
1. The tax that the PC_R pays in the country of residence, when the FS_D makes the repatriation of foreign income tax in the year which such income was generated in (2014)	200000
2. The present value of the tax the PC_R would pay in the country of residence if the FS_D postponed the repatriation of the income generated in 2014, until no later than 2019 (200000 x 0.784)	156800
3. The reduction of tax at the TNC level caused by the isolated influence of postponing the foreign income repatriation in the country of residence	43200
The isolated quantitative effect of the five-year-long postponing of the repatriation of foreign income in the country of residence	
1. The global tax rate	20%
2. The effective tax rate in the country of residence	15.7%

Source: Author

character has: the procedure of capital gains taxation is performed based on realization instead of real generation, i.e. the effective tax rate is reduced because taxes are not paid at the moment of real generation but will be paid in the future, at the moment of realization).

EFFECTS OF INTERNATIONAL INCOME REALLOCATION

The key issues of TNC taxation are initiated by the procedure of precisely defining the character of and

sharing international income among the countries involved. According to the globally current concept of separate taxation, a TNC establishes the transfer price on an ALP basis for every international transfer of goods, services and intangible assets transferred to its globally dispersed subsidiaries. In real life, separate taxation confirms to have some respectable advantages as well as disadvantages.

At the beginning of the last century, the international community adopted separate taxation, giving it the status of the superior concept of counting the amount of

the income that a TNC has earned by certain countries of the capital destination. The concept was traditionally favored by some immanent characteristics. First, the TNC taxation procedure is inspired by a professional argument that each group of related entities as merely a single form of organizing business activities must be put in the same tax plan together with alternative organizational forms. The treatment of related and „unrelated“ enterprises on the same ALP basis derives strong attractiveness. Second, the international community came to a consensus about the concept of the distribution of the international base, which is a reasonable excuse for its usage at the global level.

Nowadays, renowned institutions/experts are disturbed by a lack of vision because the topics on the agenda belong to the corpus of the elementary issues of international taxation, „establishing coherent international taxation“, „the recovery of the effects and benefits of the international standards“ and „providing transparency“, which were once believed to have been put *ad acta* at the end of the last century. The expert public faced a test of historical changes. There are „good“ reasons to give up on separate taxation. First, the impossibility of determining ALP prices for numerous intra-company transfers, which is confirmed by the OECD Action Plan for 2014/2015. Second, increasing the total costs of the implementation of separate taxation for both taxpayers and the administration (obeying the ALP principle is an expensive process). Third, there is contemporary governments' concern about the erosion of their own public revenue because of the correlation of the intensifying of global investments and international income reallocation.

The concern is stressed in the corpus of the developed countries which apply in practice high corporate income tax rates. According to the data for 2014, the corpus of the developed countries with a high corporate income tax rate include: Argentina (35%), Australia (30%), Austria (25%), Belgium (33.99%), China (25%), Denmark (24.5%), France (33.33%), Germany (29.58%), Italy (31.4%), Japan (35.64%), Luxemburg (29.22%); Holland (25%), Norway (27%), South Africa (28%), Spain (30%), Sweden (22%), UK (21%), USA (40%). (2014) The global directions of international income reallocation, as the function of the international differences in corporate

income tax rates, can be anticipated in the context of the data related to the average corporate income tax rates by particular continents (2014): Africa - 27.85%, America - 27.62%, North America - 33.25%, Latin America - 27.15%, Oceania - 27%, Europe - 19.68%, the EU Member States - 21.34%, the OECD Member States - 24.11%, the global average rate for 136 observed countries - 23.57% (KPMG, 2014).

The reallocation of the international income can be under the influence of heterogenous factors. We focus on the interaction of the height of the tax rate and the intensity of the reallocation of income in a hypothetical ambience of the immobilization of all the remaining potential determinants. Two business ambiances will be compared in order to isolate the influence of different national rates of corporate income taxes on the reallocation of international income: (a) the standard market business ambience, when market prices are meritory, and (b) the business ambience of a TNC, with the meritory transfer prices. In order to ensure the comparability of the data between the two business ambiances different in character, a presumption of income equivalence is introduced: the total income from regular operations prior to taxation is identical in both observed business ambiances (40000 m.u.) (Table 2).

First, the market ambience of operating is observed. The business transactions between one separate operating company in the „R“ country (the equivalent to the country of residence), SC_R (where corporations are taxed at the rate of 10%), which, at the market prices, delivers final products to a separate trading company in the „D“ country (the equivalent to the destination country), SC_D (where corporations are taxed at the rate of 30%) (Table 2) are analyzed. When market prices are meritory, the management of unrelated entities are individually concentrated on maximizing their individual business results. There is no international tax planning because the tax component is a separate factor of business decision making in two unrelated companies. Business relations between two unrelated entities are typically manifested in reducing the total of the realized net income at the level of the two unrelated companies (the sum of the net income of the two unrelated companies, SCR and SCD , is 33000 m.u.) (Table 2), and in an increase of the net income of the

unrelated trading company in the „D” country (the net income of the SCD is 10500 m.u.) (Table 2).

The business ambience of the TNC applying the unitary business strategy on the world market in the presence of international tax planning is now observed. The business transactions between the

parent operating company in the country of residence, PCR (where the rate remained the same as in the „R” country, i.e. 10%) (Table 2), which, at the transfer prices, delivers final products to the related trading subsidiary in the destination country, FSD (where the rate, also remained the same as in the „D” country, i.e. 30%) (Table 2) are analyzed. The aimed function is the

Table 2 The valorization of the effects of the reallocation of international income on the reduction of tax at the TNC level

The allocation of net income among the unrelated entities (in monetary units)	
The business transactions of the unrelated operating company, SC_R , in the „R” country (the equivalent to the country of residence)	
1. The revenue from the sale of final products	100000
2. The costs and expenditures made	75000
3. The income from regular operations prior to tax	25000
4. Corporate income tax (10%)	2500
5. Net income	22500
The business transactions of the unrelated trading company, SC_D , in the „D” country (the equivalent to the destination country)	
1. The revenue from the sale of goods	200000
2. The costs of the acquisition of final products	100000
3. The costs and expenditures made	85000
4. The income from regular operations prior to tax	15000
5. Corporate income tax (30%)	4500
6. Net income	10500
The reallocation of net income among the related entities (in monetary units)	
The business transactions of the parent operating company, PC_R , in the country of residence	
1. The revenue from the sale of final products	110000
2. The costs and expenditures made	75000
3. The income from regular operations prior to tax	35000
4. Corporate income tax (10%)	3500
5. Net income	31500
The business transactions of the related trading subsidiary, FS_D , in the destination country	
1. The revenue from the sale of final products	200000
2. The costs from the acquisition of final products	110000
3. The costs and expenditures made	85000
4. The income from regular operations prior to tax	5000
5. Corporate income tax (30%)	1500
6. Net income	3500

Source: Author

one of maximizing net income at the TNC level. Since the unified tax component is within the competence of the central management, the resultant of international tax planning and the valorization of the intra-company transactions in accordance with the transfer prices, i.e. the resultant of the convergence of the economic aims of the group members of the related persons, is an increase in net income at the TNC level (to 35000 m.u.) and a reduction of the net income of the foreign subsidiary in the destination country (to 3500 m.u.) (Table 2).

Although the initial income of regular operations prior to taxation were identical in both business ambiances (40000 m.u.) because of a possibility of international tax planning, the TNC realizes bigger net income (35000 m.u.) compared to the total net income of the two unrelated entities (33000 m.u.). The increase in the net income of the group of the related entities by 2000 m.u. (Table 2) is the result of the isolated influence of the difference in the tax rates on the reallocation of international income from the country with higher corporate income tax (30%) to the country with lower corporate income tax (10%). In other words, international tax planning ensured the tax saving of 2000 m.u. for the TNC. The unrelated entities, in other words the two „national“ companies, are handicapped since they have not been given a possibility of international tax planning because of which they pay higher taxes altogether by 2000 m.u., and consequently make a worse total business result.

The increase in international differences in the corporate income tax rates encourages the international reallocation of income. The bigger an international difference in corporate income tax rates, the bigger a benefit from manipulating in the area of price determining for intra-company transactions. As long as there are differences in the corporate income tax rates among countries, there is a realistic incentive for TNCs to locate their income in low-tax countries and their costs in high-tax countries.

EFFECTS OF REFORM TENDENCIES IN THE EU

When the reallocation of international income is observed in the context of the alternative methods (1-

4) which the country of residence can use to react to the prior tax of the destination country with an aim to mitigate international double taxation, we find ourselves in the position to formulate the following professional comments:

- When the country of residence of a TNC applies foreign tax credit, the incentive for the reallocation depends on the position the TNC has reached in relation to foreign tax credit (if the TNC is either in the credit deficit position or in the credit surplus position) as well as on the statutory possibilities of postponing tax payment in the country of residence (whether the parent company can use such excess credit by carrying it either backward or forward).
- When the country of residence of the TNC applies an exclusion or deduction method of foreign tax, the TNC always has an incentive to reallocate international income in a low-tax country.
- When a new tax system to cover certain territory (the EU) is being developed, then the EU TNC has an incentive to reallocate its income beyond the territory boundaries of the EU-28, in the Republic of Serbia, for instance.

In the recent past, the EU has intensified the question of the essential reform of corporate income tax by the phase application of the „common consolidated corporate tax base“ (the CCCTB) in order to promote the global competitive superiority of the EU. At the dawn of the European tax discourse, which relations can be expected on the territory of the Republic of Serbia? First of all, the essence of the current and perspective tax reform tendencies can reduce the national tax sovereignty of the countries gravitating towards the Euro zone, including the two central implications for the scope of international tax planning in the Republic of Serbia.

The first implication implies the activation of non-tax instruments for improving the competitiveness of Serbia's economy. The European Union chose a two-sided combination of supranational autonomy, meaning the existence of one, consolidated tax base at the level of the European Union, and national autonomy, meaning different tax rates at the level of

the 28 European Union Member States. Serbia must understand this two-sided strategy in three ways:

- as a partial loss of control in the tax incentives segment,
- as an indicator of the tendency of reducing the significance of tax competition in the corporate income tax rate segment, and
- as the inhibiting of the developing-propulsive potential of tax preferential instruments in favor of the growth of the relative significance of non-tax subsidies.

Since a single, European tax base is to be determined, Serbia is implicitly provided with a reduced possibility of autonomously leveling the effective tax burden of corporations by tax incentives, i.e. of influencing the mobilization of international capital by a set of tax preferentials. Because the possibility of competing by varying the size of the tax base is reduced, the remaining possibility is to compete by varying the height of the tax base. Can the strategy of the atypically low tax rate of 15% (until 2012, the rate was 10%), which, within the EU, is still only used in Bulgaria (10%), Cyprus (where traditionally the rate of 10% was used, but in 2013, the rate was increased to 12.5%, which is the rate that is still in use) and Ireland (12.5%) be an effective instrument of the promotion of the economic space of the Republic of Serbia? No, it cannot. Serbia finished its race from „top” in 1992 to „bottom” in 2012 (Službeni glasnik Republike Srbije, 25/01, 80/02, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/2013, 68/2014).

Serbia realized an impressive trend of reducing the enterprise profit tax rate. The authorities then (1992) started with the fantastic rate level of 40% (Službeni glasnik Republike Srbije, 76/1991) only to reduce the rate to 30% in 1994 (Službeni glasnik Republike Srbije, 43/1994). After that, on 1st January 1999, the authorities reduced the rate from 25% to 20%, so, for the first time, the rate in Serbia was lower than the correspondent „average rate” of the corporate income tax of the EU Member States (26%). However, the strategy of the tax rate reduction went on to charm the following generations of authorities as well, who, by „forgetting” the international aspect of the tax content, „reached” 2012 and established the „atypical reduction

of the rate” to 10% („the bottom”). What professional comments does the presented regressive scenario deserve (1992-2012)? When taxing transnational corporations, every redesigning of corporate income tax in the destination country, in Serbia, must be observed integrally with the corresponding tax effects in the countries of residence of TNCs in the EU member states. When the rate in Serbia is below „the average rate”, and particularly when it is significantly below „the average rate” of developed countries, TNCs in the majority of developed countries are not in the „credit surplus” position but rather find themselves in the „credit deficit” position. In other words, when the rate in the destination country is lower than the credit limit of the country of residence of the parent TNC, tax requirements are allowed because the TNC has a surplus of unused (approved) credit by its country of residence. Then, each further reduction of the rate reduces the relative importance of the very tax subsidy and increases the importance of the non-tax subsidies that are to be met. By making a clear intersection of the attitudes previously presented, we point out that the strategy of the continuous rate reduction (1992-2012) took away the status of an exclusive owner of comparative advantages for the mobilization of foreign capital from enterprise profit tax.

In 2013, the Serbian government introduced the logic of discontinuity with the previous twenty-year period of the „pro-European designing” of enterprise profit tax by increasing the rate from 10% to 15% (the average rate in the EU-28 was 22.75% in 2013, and 21.34% in 2014). So, we all find ourselves at the „beginning” once again (2013-2014). The Government is being faced with a question of a possibility of including, by means of non-tax subsidies, extreme requirements for a direct reduction of the price of conducting the entrepreneur’s registered activity in the Serbian economy, reorganizing the realization of competitive tendencies in order to attract foreign investments. Nowadays, RS is faced with a pronounced need for the rebalancing of the relationship on the relation net inflow of international capital – the net loss of public revenue based on the non-standard reduction of the tax rate.

The second implication points out the fact that no increase in the collected public revenue based on the

taxation of TNCs in Serbia can be expected; what we can expect is the prolonging of international (TNC) pressure on the budget of the Republic.

The doyens among the old members of the European Union, who themselves are faced with the failure of the Lisbon Agenda and who hurriedly work on the implementation of the Europe 2020 Strategy (EC, 2010), will choose the definition and the way of sharing the consolidated base, i.e. the „external“ link towards countries outside the EU-28, in such a way so as to, in the first place, satisfy the interests of the European transnational (multinational) corporation. The consolidation of the tax base at the level of the European multinational corporation makes it possible for the central management to reduce the tax burden of the European subsidiaries present in Serbia by combining the instruments of international tax planning with the effects of the ratified bilateral agreements. The combination of the noted factors can objectively imply a reduction of income from enterprise profit tax, i.e. it can prolong the existing pressure on the budget of the Republic of Serbia (revenue from enterprise profit tax in Serbia is standardly below 1.5% of the GDP, which is almost two times as small as the EU average).

The first task of the State of Serbia must be a skillful navigation through the process of a „real“ public-private partnership. Serbia must carefully enter into an interactive partnership with big transnational (multinational) corporations by co-financing and co-producing the vital components of the public-economic-political results in an atmosphere of cooperation and competition. The national public financial and economic social results should be achieved according to the circumstances of the porous borders between the public and the private sectors, on the one hand, and between the areas of the domestic and foreign economic (tax) policies, on the other.

CONCLUSION

The aura of intra-version had shaded the content of the public finances for too long. The local coloration and the national predetermination, i.e. the favorability of the public finance development, have in the meantime

been rethought. The global challenges have added new functions to the national public finances in the context of a reaction to the globalization of its main activities and competences.

The growing complexity of international economic relations emphasizes the importance of the international aspect of the corporate sector taxation. The globalization practically means that a transnational corporation is a taxpayer in multiple countries, conditioning an overlapping of national tax jurisdictions and opening a big question of international double taxation. Since the actual global tax content is represented by a disharmony between the national tax system, on the one hand, and the internationally efficient allocation of resources and the fair sharing of the international tax base, on the other, the search for a methodological form able to optimize the burden of international double taxations continues.

As the direct outgrowth of the disharmonic official procedure of international taxation, international tax planning can take different forms. By studying the effects of the basic forms of international tax planning, we have come to particular results.

By thoughtfully restructuring its global business transactions, a transnational corporation can achieve an „extra“ reduction of the effective tax burden compared to the level of the tax burden standardly predetermined within the officially established procedure of international taxation (OECD). This statement directly originates from the first research hypothesis, which stresses the existence of an invert relationship between the length of the period of the postponing of the repatriation of foreign income from a foreign subsidiary into the parent corporation in the country of residence, on the one hand, and the effective tax paid by the parent corporation (TNC), on the other.

The bigger international difference in the corporate income tax rate, the bigger benefit from manipulating in the area of determining prices for intercompany transactions. As long as there are differences in corporate income tax rates among countries, there is a real incentive for TNCs to locate their income in low-tax countries and their costs in high-tax countries. Based on the presented statements, the second research

hypothesis can be defended and a conclusion can be drawn that the growth of international differences in the corporate income tax rates encourages the international reallocation of capital.

By confirming the third hypothesis of the paper, we explicitly came to conclusion in this paper that, when defining the methodology and valorization of the effects of TNC taxation, every redesigning of corporate income tax in the destination country, in Serbia, must be observed integrally with the corresponding tax solutions in the countries of residence of TNCs, in the EU Member States. The actual reform tendencies in the EU influence the range of tax planning in the Republic of Serbia in two ways, namely in the form of activating non-tax instruments for improving the competitiveness of the Serbian economy and in the form of prolonging international pressure on the budget of the Republic of Serbia.

The main affirmative specificities of this paper are represented by the standard methodology, namely an original illustration of the treated problems and the argued justifications of the results obtained. The main disadvantage of this paper is its partial approach to the analyzed problems since numerous respectable instruments of international tax planning have not been included in the analysis.

The paper is important not only for the academic community but also for the creators of the tax policy. In the Republic of Serbia, analyses of multidimensional issues of international tax planning and/or similar problems from the broader corpus of „international taxation” are relatively rarely carried out. In this particular area, the Republic of Serbia is at the back of the group of countries of South-East Europe because there is an absolute absence of normative and practical development especially in the segment of the administrative control of transfer prices. This paper can be an inspiration for researchers who, in their professional work, are tangent to the problems in focus. In further researches, attention should be directed towards the fifteen open questions zoomed by the OECD in its Action Plan 2014 and 2015.

The paper is important from the practical point of view and is also problem illustrative for the creators of

the tax policy in the Republic of Serbia since it implies the complexity and challenges of international tax planning. The research done enables us to formulate particular instructional messages for the needs of the creators of the tax policy of the Republic of Serbia.

The first instructional message is initiated by the question of the effects of the postponing of international income repatriation: When speaking about the position of the country of the placement of capital, i.e. the position of Serbia, what are the objective potentials of the tax preferring of the corporate sector with respect to attracting foreign capital? We stress the marginal example of the foreign tax credit method. Tax policy creators must have in mind the fact that the country of the origin of capital activates its own tax regime at the moment of the repatriation of income, which can have negative consequences for the tax incentives previously approved in the country of capital placement. To the extent a tax incentive in the country of capital results in a tax liability smaller than a tax liability determined in the country of origin, the tax benefits approved in the country of placement can be taxed again in the country of origin. If the presented marginal scenario is really played, the onerous curiosity is in fact the transfer of tax revenues from the Treasury of the country of placement (Serbia) to the Treasury of the country of origin (the EU).

The second instructional message is initiated by the question of the effects of the reallocation of international income: What are the basic methodological-practical challenges of the subject matter of the transfer prices in Serbia? The increasing significance of TNCs (MNCs) in Serbia is manifested through the non-existence of separate enterprises in numerous economic activities. The increasing complexity of operations performed by TNCs (MNCs) in Serbia should be answered by the simplification of the taxation procedure, which is based on knowing the nature of a business transaction and the evaluation of the risk of the appearing of manipulations with the transfer prices by certain activities/big entities. Because of the international implications of the transfer prices, while building of one's own database, the Amadeus database should be used – the database of comparable financial information for public and private companies in Europe (<https://amadeus.bvdinfo.com/>). The Serbian

tax administration should be focused on the actual concept of the „Advance Pricing Agreement“. The resultant of the APA concept is a cost efficient result, the realization of a certain level of reducing the tension in the taxpayers-administration relationship, at the lowest possible total costs.

The third instructional message is initiated by the question of the actual and perspective reform tax tendencies. With respect to the mobilization of capital, how far is it justified in the country of capital placement, i.e. in Serbia, to apply the strategy of the reduction of the enterprise profit tax rate? The benchmark is the parallel relation of the volume of the tax paid in the country of capital placement and foreign tax credit in the developed country of capital origin.

The previously stated instructional messages are the founded ideas that, from different „aspects“, run down to the same professional „source“: the character and potentials of a tax system are the realistic reflection of the achieved level of economic development. The tax system in Serbia is not, or cannot be, an individual „predecessor“ but rather the „parallel“ and most often the „follower“ of the achieved level of the total economic-technological-social-political emancipation. The development-propulsive scopes of the tax content will directly be proportionally increased with the intensification of the logistic support from the very fundament of such development: (a) from the development of an internationally recognizable entrepreneurial climate, when the business ambience of the Republic of Serbia has become a pro-European outgrowth rather than the resultant of frequent, sometimes daily, but in any case short-term bound, non-strategic reform movements; (b) from the professional and institutional stateliness and responsibility, when the credibility of not just tax actors, as the most miraculous and crucial prerequisite of a success and business reputation, has become an outdated question.

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OCENA EFEKATA MEĐUNARODNOG PORESKOG PLANIRANJA

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U ovom radu valorizujemo efekte osnovnih instrumenata međunarodnog poreskog planiranja, koji se odnose na efekte odlaganja repatrijacije međunarodnog dohotka, efekte realokacije međunarodnog dohotka i efekte tekućih i perspektivnih reformskih tendencija u zemljama članicama Evropske unije (EU) na domete međunarodnog poreskog planiranja u Republici Srbiji (RS). Transnacionalna korporacija (TNK) može da, osmišljenim restrukturiranjem globalnih poslovnih transakcija, ostvari „ekstra“ smanjenje efektivnog poreskog tereta, u komparaciji sa nivoom poreskog tereta koji je standardno predviđen u okviru oficijelno ustanovljene procedure međunarodnog oporezivanja (OECD). Sve dok postoje razlike u stopama poreza na dohodak korporacije između zemalja, postoji realan podsticaj za TNK da lociraju svoj dohodak u zemljama sa niskim porezima, a svoje troškove u zemljama sa visokim porezima. Aktuelne reformske tendencije u EU dvostrano utiču na domete poreskog planiranja u RS, u formi atraktiviziranja neporeskih instrumenata za unapređenje konkurentnosti privrede RS, i u formi prolongiranja međunarodnog pritiska na budžet RS.

Ključne reči: međunarodno oporezivanje, međunarodno poresko planiranje, transnacionalna korporacija, repatrijacija međunarodnog dohotka, realokacija međunarodnog dohotka

JEL Classification: H25, F23

UVOD

Globalizacija je proces širenja registrovane poslovne aktivnosti van nacionalnih granica. Transnacionalne korporacije (TNK) i multinacionalne korporacije (MNK) „ne poznaju“ nacionalne granice i obavljaju prekogranične poslovne operacije na multinacionalnom nivou. Međunarodno oporezivanje, tj. korpus pravila koji reguliše oporezivanje dohotka iz stranog izvora rezidenta i domaćeg dohotka nerezidenta, inspirisan

je ublažavanjem i/ili eliminisanjem međunarodnog dvostrukog oporezivanja, koje postoji zbog sukoba između zemlje rezidentstva TNK i zemlje destinacije kapitala oko podele poreskog „plena“. Matična kompanija registruje sedište centralnog menadžmenta u zemlji rezidentstva, dok posredstvom filijala realizuje prekogranične operacije širom sveta. Realizacija biznis operacija generira preklapanje kompetencija između involviranih nacija.

Koja nacionalna poreska jurisdikcija ima pravo da oporezuje međunarodnu poresku osnovicu (međunarodni dohodak), koji segment međunarodne poreske osnovice i po kojoj stopi? Ovo pitanje se

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postavlja u ambijentu globalne poreske disharmonije, odnosno, u ambijentu različitih nacionalnih sistema, metoda i principa oporezivanja korporativnog sektora. Poreska disharmonija utiče na efikasnost i pravičnost međunarodnog oporezivanja, ali predstavlja i elementarnu pretpostavku za aktiviranje međunarodnog poreskog planiranja od strane TNK (MNK). Drugim rečima, markiramo činjenicu da su disharmonija aktuelne procedure međunarodnog oporezivanja i međunarodno poresko planiranje komplementarni sadržaji.

Predmet ovog rada je međunarodno poresko planiranje, odnosno, razmeštanje globalnih poslovnih transakcija TNK ili MNK u cilju minimalnog iznosa plaćenih poreza, drugim rečima, u cilju maksimalnog neto dohotka na nivou TNK (MNK). Instrumentarij i razmere poreskog planiranja osciliraju u zavisnosti, pre svega, od karaktera registrovane delatnosti TNK (MNK) i karakteristika organizacione strukture, odnosno, od mesta prebivališta centralnog menadžmenta i poreskih autentičnosti zemalja u kojima su filijale locirane.

Ključni inicijatori analitičkih dilema u oblasti disharmoničnog međunarodnog oporezivanja su:

- repatrijacija dohotka iz stranog izvora u zemlju rezidentstva, kada je problematičan momenat repatrijacije, i
- postupak alokacije, odnosno, realokacije dohotka i troškova na različite prekogranične destinacije, kada je problematična kombinovana primena transferne cene, tj. cene koju jedan zavisani entitet naplaćuje drugom za međukompanijske transakcije unutar TNK (MNK), i korektivnog principa „van dohvata ruke“ (*arm's length principle* - ALP princip), tj. principa oporezivanja koji međukompanijske transakcije, transakcije između povezanih domaćih i stranih entiteta, hipotetički tretira kao da su u pitanju transakcije između nepovezanih entiteta.

Cilj ovog rada je prezentiranje rezultata istraživanja u domenu tri težišna pitanja: Kako momenat repatrijacije međunarodnog dohotka utiče na visinu poreskog tereta TNK (MNK)? Kako realokacija međunarodnog dohotka utiče na visinu poreskog tereta TNK

(MNK)? Kako aktuelne i perspektivne reformske tendencije u zemljama članicama EU utiču na domete međunarodnog poreskog planiranja u Republici Srbiji?

Na osnovu deskripcije predmeta i cilja istraživanja, formulisane su tri bazne hipoteze:

- H1: Postoji inverzan odnos između perioda odlaganja repatrijacije međunarodnog dohotka u matičnu kompaniju TNK u zemlji rezidentstva, na jednoj strani, i efektivnog poreza koji plaća rezidentna TNK, na drugoj strani.
- H2: Intenzitet međunarodne realokacije dohotka je u funkciji veličine međunarodnih razlika u zakonskim stopama poreza na dohodak korporacije.
- H3: Prilikom oporezivanja transnacionalnih korporacija, odnosno, njihovih filijala, svako redizajniranje poreza na dohodak korporacije u zemlji destinacije mora biti integralno posmatrano sa korespondentnim poreskim efektima u zemljama rezidentstva TNK.

Za potrebe istraživanja efekata međunarodnog poreskog planiranja koristi se standardna metodologija, koju favorizuju respektabilne institucije i profesionalni autoriteti. Za valorizaciju ciljne funkcije TNK, primenjuje se metod sadašnje vrednosti neto dohotka, poreskih troškova i poreskih ušteda (Hyman, 2011, 199; Schreiber, 2013, 27-32; OECD, 2014, 1-7). Za postupak analize i/ili korekcije transfernih cena, relevantan je reprezentativan tradicionalan metod uporedive cene na tržištu (OECD, 2010b, 64; UN, 2013, 196-197; Službeni glasnik Republike Srbije, 61/2013, 8/2014, 5).

Rad je strukturiran u osam delova. Drugi deo rada je posvećen deskripciji geneze ključnih događaja, stanja i perspektivnih tendencija u domenu međunarodnog oporezivanja. U trećem delu rada analizirane su performanse alternativnih sistema međunarodnog oporezivanja i raspoloživih metoda za ublažavanje ili eliminisanje međunarodnog dvostrukog oporezivanja. U četvrtom delu rada je prezentirana metodologija koja je korišćena za valorizaciju efekata međunarodnog poreskog planiranja. Peti, šesti i sedmi deo rada sadrže rezultate istraživanja efekata međunarodnog poreskog planiranja, koji se respektivno odnose na efekte

odlaganja repatrijacije međunarodnog dohotka, efekte realokacije međunarodnog dohotka i efekte tekućih i perspektivnih reformskih tendencija u zemljama članicama EU na domete međunarodnog poreskog planiranja u Republici Srbiji. U osmom delu rada dati su zaključci.

GLOBALNI PORESKI PEJZAŽ

Komentarišući međunarodni poreski sadržaj u intervalu prvih decenija XXI veka, ekvivalent za svetski poreski sistem je svetska poreska disharmonija. Procedura međunarodnog oporezivanja „stoji“ na tri fundamentalna konceptijsko-metodološka stuba. Prvi stub je valorizacija: Međunarodne ekonomske aktivnosti se mogu valorizovati. Drugi stub je identifikacija: Transnacionalne i multinacionalne korporacije i njihove planetarno raspoređene filijale mogu se identifikovati. Treći stub je teritorija: Porezi se mogu razrezati u skladu sa tokovima ekonomske aktivnosti na teritoriji konkretne zemlje. Gde se stvara dodata vrednost? Kako treba operacionalizovati pravičnu podelu međunarodne poreske osnovice, međunarodnog dohotka, između zemalja čija se prava na oporezivanje međusobno preklapaju?

OECD model konvencije o oporezivanju dohotka i kapitala, Biznis profiti (član 7) i Povezana preduzeća (član 9), favorizuje kombinaciju metoda separatnog oporezivanja i pratećeg ALP principa, kao međunarodnu normu za alokaciju dohotka između domaćih i stranih filijala date TNK/MNK (OECD, 2010a; 2010b). Međutim, metod je u biti aproksimativan, a često i sasvim neupotrebljiv. Prema unikatnoj analizi implikacija ALP principa (Devereux & Keuschnigg, 2009, 31), ALP cene se sistematski razlikuju od cena nezavisnih entiteta, što je indikator prisustva poreske evazije i međunarodnog dvostrukog oporezivanja. Primena ALP ugrožava poslovne aktivnosti TNK/MNK, smanjujući kapacitet zaduživanja i investiranja stranih filijala, i narušava izbor forme organizovanja investicionog nastupa na svetskom tržištu. Iako ALP povećava javne prihode u zemlji rezidentstva matične kompanije, veći je gubitak blagostanja u zemlji gde je njena filijala locirana, u zemlji destinacije kapitala.

OECD je krajem XX veka, skoro istovremeno sa EU (European Commission, 1998), identifikovala ključne faktore „štetne poreske konkurencije“, odnosno, agresivnog poreskog planiranja (OECD, 1998, 25-35). Tokom prve decenije XXI veka, OECD je bila prepoznatljiva po zahtevu za ukidanjem preferencijalnih režima za entitete iz oblasti finansijskih usluga. U pogledu karaktera problema koji su danas na dnevnom redu, OECD reaktivira rešavanje četiri centralna pitanja koja su 1998. godine bila u početnoj fazi, ali su u međuvremenu evoluirala, uz izvesna „nova“ pitanja za koja su obostrano zaslužni dinamična globalizacija i tehnološko-telekomunikacioni razvoj:

- uspostavljanje koherentnog međunarodnog oporezivanja korporativnog dohotka;
- potpuno obnavljanje efekata i beneficija međunarodnih standarda;
- obezbeđivanje transparentnosti, uključujući promociju izvesnosti i predvidivosti; i
- sa stanovišta usaglašenih poreskih pravila, potrebna je brza implementacija odgovarajućih mera (OECD je 4 centralna cilja strukturirala u 15 subcentralnih ciljeva, čije je rešavanje postdatirano na septembar 2014. godine i oktobar 2015. godine (OECD, 2013a, 3; OECD, 2013b, 15-25).

Permanentnu aktuelnost ostvaruju pitanja izbegavanja poreza. OECD i G-20 razvijenih nacija su markirale zemlje „poreskog raja“ i precizno ih grupisale prema geografskoj lokaciji (Gravelle, 2013, 3), dok se unikatna poreska pozicija Švajcarske, donedavno, uopšte nije apostrofirala. Federalna stopa u Švajcarskoj je 8.5% neto dohotka. Kombinovana kantonalna i lokalna stopa varira od oko 12% (Kanton Lucerne) do 24% (Kanton Ženeva), sa prosečnom stopom od oko 18%. Ključna specifičnost je poresko podsticanje holding kompanija (kvalifikovane kompanije plaćaju samo federalni porez 8.5% (Deloitte Touche Tohmatsu Limited, 2013, 2; 6). Ovakav koncept naglašava međunarodnu konkurentnost Švajcarske, koja se ispoljava u formi realokacije sedišta ne samo MNK iz SAD-a u Švajcarsku (Foster Wheeler, Philip Morris, Transocean, Tyco International, Weatherford), već i sedišta MNK EU (Amgen, Cargill, Chiquita, E-Bay,

Kraft Foods, McDonalds, Monsanto, Pfizer and yahoo) (Steimle, 2014, 3).

Međunarodnim oporezivanjem ne rukovode multilateralni ugovori, već dominiraju bilateralni ugovori: koji *per se* ukazuju na limitiranje, lokalizaciju međunarodne saradnje, i koji su komplementarni krunskom međunarodnom pravilu da ne postoje konzistentna pravila međunarodnog oporezivanja. Egzistiraju nacionalni poreski principi, koji se potom primenjuju na internacionalne aktivnosti. Usaglašena pragmatična pravila ne samo da prethode principima međunarodnog oporezivanja, već i rezultati takvih pravila moraju biti prihvatljivi za sve respektabilne zemlje, tj. pravila moraju biti saglasna *Big boys rule* (Bird & Mintz, 2003, 426).

Globalno tržište je „preplavila“ nematerijalna aktiva. Samo nakon godinu dana od donošenja ključnih, još uvek važećih, dokumenata OECD (OECD, 2010a; 2010b), saopšteno je oficijelno obrazloženje, autorizovano od strane direktora Centra za poresku politiku i administraciju u OECD, C. Silberstein (2011, 3), da je pitanje dematerijalizacije daleko od definitivnog rešenja:

„Brojna specifična pitanja za nematerijalnu aktivnu su ostala po strani u reviziji Smernica OECD za primenu pravila o transfernim cenama za multinacionalna preduzeća i poreske administracije iz 2010. godine. Složenost problema dovodi do monetarno značajnih nesuglasica povodom transfernih cena širom sveta, sa rizicima dvostrukog oporezivanja ili odsustva oporezivanja.“

Od kada je biznis prvobitno kročio u *digital economy* i započeo realizaciju *e-commerce*, značenje pojmova: valorizacija, identifikacija i teritorija je aproksimativno definisano. Vizuelizacija stvarnosti kazuje da tone fundament aktuelnog svetskog poreskog sadržaja.

Komentarišući 28 nacionalnih poreskih sistema Evropske unije u intervalu prvih decenija XXI veka, ne iznenađuje opis poreske situacije u Uniji kao poreski disharmoničan, kao što ne iznenađuje ni da institucionalni i biznis lideri kontinuirano traže put prema efikasnijem, nadnacionalnom, evropskom modelu, prema tretiranju grupe povezanih entiteta, koji realizuje i integriše biznis širom EU, kao

„evropske TNK/MNK“, a ne kao holandske, italijanske ili austrijske korporacije, na primer, koja posluje kao separadni entitet u preostalim članicama EU.

Da bi opisali evropski pejzaž za poresku reformu, varijacije u stopama i, pre svega, osnovicama poreza na dohodak korporacije su tako velike da je nemoguće prepoznati zajednički imenitelj između središnjih elemenata osnovice. Trinaest novih članica jesu smanjile prosečan nivo stope, ali su i povećale varijacije u sistemima oporezivanja dohotka.

Evropska unija se kreće u novom, angloameričkom poreskom smeru i rezonuje: transnacionalna (multinacionalna) korporacija Evropske unije treba da, koristeći samo jedan, evropski set poreskih pravila izračuna samo jednu, evropsku poresku osnovicu, zajedničku konsolidovanu osnovicu poreza na dohodak korporacije (Common Consolidated Corporate Tax Base - CCCTB), koju bi potom podelila između zemalja članica u kojima su locirane filijale evropske multinacionalne korporacije, prema unapred utvrđenoj formuli za raspodelu. Istovremeno, poput uzornog rešenja, fleksibilnost sistema se održava ostavljanjem odluke o poreskoj stopi u rukama 28 nacija, koju će pojedine zemlje članice EU autonomno ustanoviti i primenjivati na svoj deo ukupnog dohotka multinacionalne korporacije ostvarenog na nivou Evropske unije.

Zašto je usporen reformski tok od separatnog ka unitarnom oporezivanju? Zbog radikalnosti promene, jer predstavlja raskid sa stoletnom evropskom poreskom tradicijom, i zbog kompleksnosti promene. Metodi oporezivanja su nesavršene zamene za ideal koji je teško postići i u teoriji, i u praksi. Da bi biznis bio integrisan, unitaran mora postojati tok vrednosti između povezanih entiteta; međutim, tok vrednosti nije lako pratiti duž neprozirnih odaja evropskog, svetskog poreskog sistema, specijalno zbog sklonosti korporativnog menadžmenta ka poreskom planiranju, dokazujući svoju inventivnost i ekspertsku superiornost u odnosu na poreske urede i njihove preteće kontrolno-revizorske i monitoring akcije.

Tradicionalni evropski metod, metod separatnog oporezivanja, zahteva da rezidentna transnacionalna (multinacionalna) kompanija izračuna posebnu

poresku osnovicu u svakoj zemlji članici Evropske unije za svaku stranu filijalu unutar povezane grupe, ali tako kao da je svaka strana filijala nezavisan entitet koji samostalno funkcioniše na tržištu Evropske unije, čime se upada u normativnu zamku sopstvenog normativnog protokola.

Metod unitarnog oporezivanja zahteva da rezidentna multinacionalna korporacija utvrđuje i raspodeljuje jednu poresku osnovicu, prema udelima koje zavisne filijale ostvare u ukupnoj biznis aktivnosti, pri čemu su udeli demonstrirani trijadom kriterijuma: vlastitom veličinom raspoložive materijalne imovine, angažovane radne snage i prihoda od prodaje (European Commission, 2011, 49).

Gde je izvoriste, a gde motivacija za implementaciju nove, reformske ideje? Unitarno oporezivanje je potpuno nov metod za EU kao ekonomski integrisanu celinu. Međutim, Španija je koristila unitarno oporezivanje do sredine dvadesetog veka, u cilju oporezivanja stranih preduzeća. Nemačka koristi metod formule za lokalni porez u sferi trgovine, *local trade tax* (Schon, 2010, 78). Evropska komisija gleda na angloamerički pristup oporezivanju, u ovom slučaju multidržavnih korporacija SAD, kao logičan smer razvoja oporezivanja transnacionalnih (multinacionalnih) korporacija u Evropskoj uniji (o specifičnostima poreskih sistema SAD i Kanade videti u: Repetti, 2010; Arnold, 2010). Poreska istorija SAD i Kanade ilustruje da su usvajanjem „novog“ metoda uspešno rešile tipične „stare“ poreske probleme: (a) višestrukost poreskih sistema, 50 državnih sistema u SAD, odnosno, 28 nacionalnih sistema u Evropskoj uniji; (b) odsustvo kompenzacije prekograničnih gubitaka; (c) eliminisanje potrebe preciziranja transfernih cena za međukompanijske transakcije koje su Ahilova peta separatnog oporezivanja.

Disharmonija međunarodnog oporezivanja je matrica za formulisanje osnovnih pretpostavki ovog rada:

- postoji inverzan odnos između perioda odlaganja repatrijacije međunarodnog dohotka u matičnu kompaniju TNK u zemlji rezidentstva, na jednoj strani, i efektivnog poreza koji plaća rezidentna TNK, na drugoj strani;

- intenzitet međunarodne realokacije dohotka je u funkciji veličine međunarodnih razlika u zakonskim stopama poreza na dohodak korporacije; i
- prilikom oporezivanja transnacionalnih korporacija, odnosno, njihovih filijala, svako redizajniranje poreza na dohodak korporacije u zemlji destinacije mora biti integralno posmatrano sa korespondentnim poreskim efektima u zemljama rezidentnosti TNK.

SISTEMI MEĐUNARODNOG OPOREZIVANJA

Nacionalne kompanije verifikuju poslovnu afirmaciju u okviru državnih granica, što je multidimenzionalni limitirajući faktor za maksimiranje sadašnje vrednosti neto dohotka. „Lokalnim“ preduzećima nije, između ostalog, na raspolaganju korpus poreskih preferencija koji je isključiva privilegija standardne procedure međunarodnog oporezivanja. TNK i MNK prvenstveno realizuju poslovne operacije na integrisanom svetskom tržištu proizvoda i usluga. Paralelno sa primamljivim makroekonomskim i mikroekonomskim koristima, katalizator međunarodnog poslovnog nastupa često je poreske provenijencije, zbog poželjnih posledica na investicije, na neto dohodak, na *trade name*. U fokusu je reaktivnost centralnog menadžmenta TNK na različit dizajn poreza na dohodak korporacije u različitim zemljama, na disharmoničnost međunarodnog oporezivanja.

Transnacionalne korporacije i njihove filijale predstavljaju „grupu povezanih društava“. Povezane entitete originalno karakteriše konfrontacija između formalne nezavisnosti, pošto filijale formalno funkcionišu kao samostalni privredni subjekti u zemljama destinacije, i faktičke zavisnosti, zbog faktičke konvergenije ekonomskih ciljeva i moći odlučivanja, koje projektuje centralni menadžment matičnog entiteta u zemlji rezidentstva. (Svi oblici organizovanja povezanih društava, u formi koncerna, holding ili društva sa uzajamnim učešćem u kapitalu, spadaju u statusne forme koncentracije, čija je karakteristika ekspanzivnost i širenje izvan državnih

granica, Službeni glasnik Republike Srbije, 36/2011; 9/2011, Zakon o privrednim društvima čl. 550, 551). Globalizacija, kao sinonim za rast međunarodne trgovine, tokova kapitala, rada i dohotka, praktično znači da su kompanije poreski obveznici različitih zemalja. U okruženju otvorenih ekonomija, preklapanje nacionalnih poreskih jurisdikcija i kompetencija apostrofira krupno pitanje eliminisanja i/ili ublažavanja međunarodnog dvostrukog oporezivanja.

Ko ima pravo na oporezivanje dohotka pojedinih kompanija disperziranih širom sveta? Globalni poreski sadržaj je disharmoničan, zato što postoje dva alternativna sistema međunarodnog oporezivanja korporativnog dohotka i četiri alternativna metoda za eliminaciju/ublažavanje međunarodnog dvostrukog oporezivanja. Prvi je globalni sistem koji, baziran na konceptu svetskog dohotka, znači da zemlja rezidentstva ima pravo da oporezuje celokupan, „svetski“ dohodak rezidentnih korporacija, bez obzira na to da li dohodak potiče iz domaćeg ili stranog izvora. Drugi je teritorijalni sistem koji, baziran na konceptu destinacije, znači da zemlja izvora dohotka ima pravo da oporezuje celokupan dohodak koji nastaje u okviru njenih državnih granica, bez obzira na to da li primalac dohotka ima prebivalište (sedište) na njenoj državnoj teritoriji, ili izvan njene teritorije. Tokom međunarodnog procesa oporezivanja korporativnog sektora, svaka zemlja se može naći u dve oponentne poresko-investicione uloge, u ulogama zemlje rezidentstva i zemlje destinacije.

Iako zemlje teže ostvarenju standardnih ciljeva poreske politike, pre svega, izgradnji pravičnog poreskog sistema i postizanju efikasne međunarodne alokacije kapitala, u kontekstu maksimizacije svetskog ili nacionalnog dohotka, načini i kriterijumi za njihovo ostvarenje se razlikuju. Zbog toga, međunarodno oporezivanje natkriljuje imperativ koordinacije nacionalnih pravila oporezivanja. Kako zemlja rezidentstva može reagovati na prethodni porez zemlje destinacije, u cilju ublažavanja i/ili eliminacije međunarodnog dvostrukog oporezivanja? Raspoloživa su četiri metoda, od kojih je prvi važan za ovaj rad, zato što je prisutan u praksi pojedinih zemalja, na primer, u USA, Japanu, UK, Irskoj, Republici Srbiji (Russo, 2007, 65).

Po prvom metodu, zemlja rezidentstva može odobriti „kredit za strani porez na dohodak“ koji je plaćen u zemlji destinacije, u punom ili delimičnom iznosu, čime priznaje strani porez kao svoj porez. Ovaj metod je zasnovan na argumentu da, sa međunarodnog stanovišta, poreska pravičnost podrazumeva da je strani porez zemlje destinacije jednako vredan domaćem porezu zemlje rezidentstva.

Po drugom metodu, zemlja rezidentstva može izuzeti strani dohodak iz procesa oporezivanja, čime se faktički odriče mogućnosti oporezivanja repatriiranog stranog dohotka. Po trećem metodu, zemlja rezidentstva može zabraniti bilo kakav odbitak prethodno plaćenog stranog poreza u zemlji destinacija, i primeniti sopstveni porez na repatriirani strani dohodak na bruto osnovi, neto dohodak uvećan za porez zemlje destinacije. Po četvrtom metodu, zemlja rezidentstva može razrezati sopstveni porez na repatriirani strani dohodak na neto osnovi, smatrajući da je strani porez „dedukcija“ od poreske osnovice. Ovaj metod je zasnovan na argumentu da, sa nacionalnog stanovišta, strani porez zemlje destinacije predstavlja trošak za rezidentnog poreskog obveznika.

METODOLOGIJA

Prekogrančne poslovne transakcije se tretiraju pomoću dva alternativna sistema međunarodnog oporezivanja, koji mogu biti operacionalizovani posredstvom navedena četiri alternativna metoda za izbegavanje međunarodnog dvostrukog oporezivanja. Za ovaj rad su važni globalni sistem međunarodnog oporezivanja i metod kredita za strani porez.

Transnacionalna korporacija (TNK) je korporacija koja istovremeno obavlja međunarodnu poslovnu aktivnost u više različitih zemalja. Za ovaj rad je važna TNK koju konstituiše jedna matična kompanija, odnosno, jedan centralni menadžment u zemlji rezidentstva (MKR), i jedna strana filijala, odnosno, jedna formalno nezavisna kompanija, zato što posluje prema zakonima strane zemlje u kojoj je osnovana, prema zakonima zemlje destinacije kapitala (SFD).

Centralni menadžment TNK sprovodi jedinstvenu poslovnu strategiju na jedinstvenom svetskom tržištu,

uključujući domaće tržište u zemlji rezidentstva. Ciljna funkcija TNK je strukturiranje transakcija u pravcu maksimiranja sadašnje vrednosti neto dohotka na nivou TNK. Poreski sistem je ne neutralan, zato što je porez faktor poslovnog odlučivanja, drugim rečima, valorizacija sadašnje vrednosti neto dohotka mora da inkorporira sve poslovne rashode i poslovne prihode, uključujući poreske troškove i poreske uštede kao rezultante međunarodnog poreskog planiranja.

Sadašnja vrednost neto dohotka na nivou TNK i/ili na nivou njenih konstituenata, kao pokazatelj sadašnje vrednosti poslovnog rezultata posle plaćanja poreza na dohodak korporacije, utvrđuje se na osnovu formule (1) (Hyman, 2011, 199; Schreiber, 2013, 27-32; OECD, 2014, 1-7):

$$SV_{ND} = \sum_{t=0}^n \frac{ND_t}{(1+i)^t} \quad (1)$$

gde je SV_{ND} sadašnja vrednost neto dohotka (ND_t) koji je ostvaren na svetskom tržištu tokom pojedinih fiskalnih godina, t , za posmatrani period od n godina. Izračunavanje sadašnje vrednosti neto dohotka baziramo na standardnoj pretpostavci finansijske analize o nepostojanju fluktuacije poslovnog rizika u funkciji vremenske komponente, tako da je diskontna stopa (i) konstantna tokom posmatranog perioda, i iznosi 5%.

Koncept transfernih cena ima tri različite funkcije (Schon, 2012, 47). Prva funkcija, sa stanovišta realizovanja poslovne aktivnosti TNK, transfernim cenama se obračunavaju međukompanijske transakcije, odnosno, prenos sredstava i formiranje obaveza po osnovu vrednosti nabavke i prodaje poslovnih rezultata u okviru grupe međusobno zavisnih kompanija raspoređenih širom sveta. Druga funkcija, sa stanovišta međunarodnog oporezivanja, transferne cene, u kombinaciji sa ALP, služe za alokaciju međunarodnog dohotka između zavisnih kompanija u okviru matične TNK, na jednoj strani, i između stranih zemalja u kojima su filijale registrovane, na drugoj strani. Treća funkcija, sa stanovišta poreske jurisdikcije, transferne cene su startna tačka procedure prevencije poreskog izbegavanja/utaje. Za ovaj rad, respektabilne su prve dve funkcije transfernih cena.

Tzv. *cene van dohvata ruke* su egzogena varijabla. Svaki izabrani metod za analizu transfernih cena mora, kao finalni efekat, imati razumnu procenu rezultata u skladu sa ALP principom. Za ovaj rad, u postupku analize i/ili korekcije transfernih cena, relevantan je reprezentativni tradicionalni metod uporedive cene na tržištu (OECD, 2010b, 64; UN, 2013, 196-197; Službeni glasnik Republike Srbije, 61/2013; 8/2014, 5).

EFEKTI ODLAGANJA REPATRIJACIJE MEĐUNARODNOG DOHOTKA

Prema globalnom sistemu, matična korporacija plaća porez na dohodak korporacije u zemlji rezidentstva, bez obzira na to gde je taj dohodak zarađen. Porez koji je platila strana filijala u zemlji destinacije može biti kreditiran na teret poreske obaveze matične korporacije u zemlji rezidentstva. Ovo rešenje je bazirano na argumentu da, zbog raspoloživog kredita za strani porez, nacionalna korporacija i TNK podnose istu stopu poreza na dohodak korporacije, stopu poreza na dohodak korporacije zemlje rezidentstva, potpuno nezavisno od toga kako je TNK locirala svoje filijale u zemlji i inostranstvu. Međutim, nacionalna i transnacionalna korporacija ne podnose identičnu poresku stopu. Proceduri međunarodnog oporezivanja je imanentno međunarodno poresko planiranje, koje TNK može da osigura dvostruku poresku povlasticu, odnosno, povećanje neto dohotka na nivou TNK po osnovu: odlaganja repatrijacije međunarodnog dohotka, i realokacije međunarodnog dohotka.

Da li matična korporacija zemlje rezidentstva može, u realnom životu, da koristi sopstvenu stranu filijalu u zemlji destinacije kao „poresko sklonište“ od sopstvene poreske administracije? Prva poreska prednost transnacionalne organizacione forme izvire iz autentične konceptijske karakteristike metoda kredita, koja obezbeđuje legalnu mogućnost odlaganja repatrijacije stranog dohotka u zemlju rezidentstva. Analiziramo TNK, grupu povezanih entiteta, koju konstituiše jedna matična kompanija u zemlji rezidentstva (MK_R), gde se plaća 30% poreza na dohodak korporacije u tekućoj godini (2014), i jedna strana filijala (SF_D), koja na 1000000 novčanih jedinica (n.j.) zarađenog dohotka u tekućoj, 2014. godini plaća 10% poreza na dohodak korporacije u zemlji destinacije.

Koliki je izolovani poreski efekat petogodišnjeg odlaganja repatrijacije stranog dohotka? Preciznije rečeno, koliki je porez na dohodak korporacije u zemlji rezidentstva u slučaju petogodišnjeg odlaganja repatrijacije ostvarenog stranog dohotka, tj. odlaganja repatrijacije do 2019. godine, na primer, u poređenju sa visinom poreza koji bi TNK platila u zemlji rezidentstva u slučaju repatrijacije stranog dohotka u tekućoj godini (2014.), uz diskontnu stopu od 5%? Zemlja rezidentstva reaguje na prethodni porez zemlje destinacije odobravanjem „kredita za strani porez“, u cilju eliminisanja (ublažavanja) međunarodnog dvostrukog oporezivanja (Tabela 1).

TNK je zainteresovana da širi poslovne aktivnosti izvan državnih granica sopstvene zemlje, zbog mogućnosti poreskog planiranja. Kada strana

filijala zaradi neto dohodak u inostranstvu, smatra se da taj „strani dohodak“ nije deo dohotka zemlje rezidentstva, sve dok matična korporacija ne odluči da izvrši njegovu repatrijaciju. Međutim, reinvestiranjem dohotka strane filijale u zemlji destinacije, na primer, matična kompanija može beskonačno odlagati plaćanje poreza na dohodak korporacije u zemlji rezidentstva. Poresko planiranje, u vidu odloženog oporezivanja, obezbeđuje TNK smanjenje poreza. U analiziranom primeru, zbog petogodišnjeg odlaganja repatrijacije stranog dohotka u zemlju rezidentstva, dolazi do smanjenja poreza za 43200 n.j. Da li oficijelna procedura međunarodnog oporezivanja obezbeđuje centralnom menadžmentu prateću, ali konceptijsko-metodološki nepredviđenu i nenameravanu, strategiju ekspatrijacije dohotka, i da li je ona komplementarna ciljnoj funkciji TNK? U ambijentu globalnog sistema

Tabela 1 Valorizacija efekata odlaganja repatrijacije međunarodnog dohotka na smanjenje poreza na nivou TNK

Opis	Iznos dohotka ili poreza (u novčanim jedinicama)
Porez na dohodak korporacije u zemlji destinacije u tekućoj godini (2014)	
1. Dohodak strane filijale, SF_D , ostvaren u zemlji destinacije	1000000
2. Zakonska poreska stopa u zemlji destinacije	10%
3. Porez koji SF_D plaća u zemlji destinacije u godini sticanja dohotka (1000000×0.1)	100000
Porez na dohodak korporacije u zemlji rezidentstva u slučaju repatrijacije dohotka u tekućoj godini (2014)	
1. Osnovica poreza na dohodak korporacije	1000000
2. Strani dohodak koji je repatriran matičnoj kompaniji, MK_R	900000
3. Zakonska poreska stopa u zemlji rezidentstva	30%
4. Kredit za porez koji je plaćen u zemlji destinacije	100000
5. Porez koji MK_R plaća u zemlji rezidentstva u 2014. [$(1000000 \times 0.3) - 100000$ kredita za strani porez]	200000
Komparativni pregled efekata tekuće i odložene repatrijacije stranog dohotka u zemlju rezidentstva	
1. Porez koji MK_R plaća u zemlji rezidentstva, kada SF_D izvrši repatrijaciju stranog dohotka u godini u kojoj je dohodak ostvaren (2014)	200000
2. Sadašnja vrednost poreza koji bi MK_R platila u zemlji rezidentstva kada bi SF_D odložila repatrijaciju dohotka, ostvarenog 2014, do 2019. godine (200000×0.784)	156000
3. Smanjenje poreza na nivou TNK uzrokovano izolovanim uticajem odlaganja repatrijacije stranog dohotka u zemlju rezidentstva	43200
Izolovani kvantitativni efekat petogodišnjeg odlaganja repatrijacije stranog dohotka u zemlju rezidentstva	
1. Globalna poreska stopa	20%
2. Efektivna poreska stopa u zemlji rezidentstva	15.7%

Izvor: Autor

međunarodnog oporezivanja i metoda kredita za strani porez, standardan rezultat oficijelno ustanovljene procedure međunarodnog oporezivanja je efektivna stopa od 20% (OECD). Međutim, restrukturiranjem transakcija u pravcu maksimiranja sadašnje vrednosti neto dohotka na nivou TNK, kao ciljne funkcije, TNK dodatno, „ekstra“ smanjuje efektivni poreski teret na 15.7%. Konstatujemo da postoji inverzan odnos između dužine perioda odlaganja repatrijacije stranog dohotka iz strane filijale u matičnu korporaciju u zemlji rezidentstva, na jednoj strani, i efektivnog poreza koji plaća rezidentna matična korporacija (TNK), na drugoj strani.

Kada se u realnom „životu“ TNK odloženo oporezivanje može ispoljiti u formi redukcije poreskog tereta u zemlji rezidentstva? Smanjenje poreza je moguće samo ako se dohodak strane filijale u zemlji destinacije oporezuje po nižoj poreskoj stopi od odgovarajuće, više poreske stope u zemlji rezidentstva, dakle, u okolnostima deficita kredita. Zašto? Zato što visinu kreditnog limita za strani porez određuje zemlja rezidentstva. U suprotnom slučaju, kada je poreska stopa u zemlji destinacije viša od poreske stope u zemlji rezidentstva, strani porez zemlje destinacije veći je od kreditnog limita, odnosno, veći je od iznosa stranog poreza koji zemlja rezidentstva želi da kreditira, čime se matična korporacija dovodi u poziciju suficita kredita. Šta ovaj „višak“ praktično znači? Jedini porez za matičnu kompaniju po osnovu dohotka iz stranog izvora je porez koji je strana filijala platila u zemlji destinacije, u godini u kojoj je taj dohodak zarađen. Suficit kredita, razliku između odgovarajućeg poreza zemlje rezidentstva i poreza zemlje izvora, matična kompanija može iskoristiti prenošenjem „unazad“, u prethodne poreske godine, ili „unapred“, u naredne poreske godine, kada će se eventualno pojaviti deficit kredita. Niski porezi u zemlji destinacije su jak agens za aktiviranje međunarodnog poreskog planiranja, za odlaganje repatrijacije stranog dohotka u zemlju rezidentstva (prezentirani poreski scenario je veoma sličan poreskoj prednosti koju poseduje dohodak kapitalnog karaktera: procedura oporezivanja kapitalnih dobitaka se sprovodi na osnovici realizacije, umesto na osnovici stvarnog nastanka, tj. efektivna poreska stopa se smanjuje, jer se porezi ne plaćaju u momentu stvarnog nastanka, već se plaćaju u budućnosti, u momentu realizacije).

EFEKTI REALOKACIJE MEĐUNARODNOG DOHOTKA

Ključna pitanja oporezivanja TNK inicira postupak preciziranja karaktera i podele međunarodnog dohotka između involviranih zemalja. Prema globalno važećem konceptu separatnog oporezivanja, TNK utvrđuje transfernu cenu, na ALP osnovici, za svaki međunarodni transfer dobara, usluga i nematerijalnih aktiva koji je doznačen globalno disperziranim filijalama. Realan život potvrđuje da separatno oporezivanje poseduje respektabilne prednosti, ali i nedostatke.

Međunarodna zajednica je početkom XX veka usvojila separatno oporezivanje, dodeljujući mu status superiornog koncepta za obračunavanje iznosa dohotka koji je TNK zaradila po pojedinim zemljama destinacije kapitala. Koncept su tradicionalno favorizovale imanentne karakteristike. Prva, procedura oporezivanja TNK je inspirisana argumentom da svaka grupa povezanih entiteta, kao samo jedna forma organizovanja poslovnih aktivnosti, mora biti stavljena u istu poresku ravan sa alternativnim organizacionim formama. Tretiranje povezanih i „nepovezanih“ preduzeća na istoj, ALP osnovici emituje snažnu privlačnost. Druga, međunarodna zajednica je došla do konsenzusa u vezi sa konceptom za distribuciju međunarodne osnovice, što je razumno opravdanje za njegovo korišćenje na globalnom nivou.

Danas, renomirane institucije/eksperte onespokojava pomanjkanje vizije, zato što su na dnevnom redu teme iz korpusa elementarnih pitanja međunarodnog oporezivanja, „uspostavljanje koherentnog međunarodnog oporezivanja“, „obnavljanje efekata i beneficija međunarodnih standarda“, „obezbeđivanje transparentnosti“, za koje se svojevremeno verovalo da će biti *ad acta* do kraja XX veka. Stručna javnost je suočena s testom istorijskih promena. Postoje „dobri“ razlozi da se odustane od separatnog oporezivanja. Prvi, nemogućnost određivanja ALP cena za brojne međukompanijske transfere, što potvrđuje akcioni plan OECD za 2014/2015. godinu. Drugi, rastući ukupni troškovi primene separatnog oporezivanja, za obveznike i administraciju (poštovanje ALP principa je skup proces). Treći, zabrinutost vlada za eroziju vlastitih javnih prihoda, zbog korelacije intenziviranja

globalnih investicija i realokacije međunarodnog dohotka.

Zabrinutost je izražena u korpusu razvijenih zemalja koje praktikuju visoke stope poreza na dohodak korporacije. Prema podacima za 2014. godinu, korpus razvijenih zemalja sa visokom stopom poreza na dohodak korporacije čine: Argentina (35%), Australija (30%), Austrija (25%), Belgija (33.99%), Kina (25%), Danska (24.5%), Francuska (33.33%), Nemačka (29.58%), Italija (31.4%), Japan (35.64%), Luksemburg (29.22%), Holandija (25%), Norveška (27%), Južna Afrika (28%), Španija (30%), Švedska (22%), UK (21%), USA (40%). Globalne pravce realokacije međunarodnog dohotka, kao funkcija veličine međunarodnih razlika u stopama poreza na dohodak korporacija, možemo anticipirati u kontekstu podataka koji se odnose na prosečne stope poreza na dohodak korporacije po pojedinim kontinentima (2014.): Afrika - 27.85%, Amerika - 27.62%, Severna Amerika - 33.25%, Latinska Amerika - 27.15%, Okeanija - 27%, Evropa - 19.68%, zemlje EU - 21.34%, zemlje OECD - 24.11%, globalna prosečna stopa za 136 posmatranih zemalja - 23.57% (KPMG, 2014).

Realokacija međunarodnog dohotka može biti pod uticajem heterogenih faktora. Fokusiramo interakciju visine poreske stope i intenziteta realokacije dohotka, u hipotetičkom ambijentu imobilizacije svih ostalih potencijalnih determinanti. Upoređićemo dva poslovna ambijenta, da bi izolovali uticaj različitih nacionalnih stopa poreza na dohodak korporacije na realokaciju međunarodnog dohotka: (a) standardan tržišni poslovni ambijent, kada su merodavne tržišne cene, i (b) poslovni ambijent TNK, kada su merodavne transferne cene. U cilju obezbeđenja uporedivosti podataka između dva karakterno različita poslovna ambijenta, uvodimo pretpostavku o dohodovnoj ekvivalenciji: ukupan dohodak iz redovnog poslovanja pre oporezivanja je identičan u oba posmatrana poslovna ambijenta (40000 n.j.) (Tabela 2).

Prvo posmatramo tržišni ambijent poslovanja. Analiziramo poslovne transakcije između jedne nezavisne proizvodne kompanije u zemlji „R“ (ekvivalent za zemlju rezidentstva), NK_R (gde se korporacije oporezuju po stopi od 10%), koja po tržišnim cenama isporučuje gotove proizvode jednoj nezavisnoj trgovinskoj kompaniji u zemlji „D“ (ekvivalent za zemlju destinacije), NK_D (gde se korporacije oporezuju

po stopi od 30% (Tabela 2). Kada su merodavne tržišne cene, tada su menadžmenti nezavisnih entiteta zasebno koncentrisani na maksimiranje svojih individualnih poslovnih rezultata. Međunarodno poresko planiranje ne postoji, jer je poreska komponenta zaseban faktor poslovnog odlučivanja u dve nezavisne kompanije. Poslovne relacije između dva nezavisna entiteta tipično se manifestuju smanjenjem ukupno ostvarenog neto dohotka na nivou dve nezavisne kompanije (zbir neto dohodaka dve nezavisne kompanije, NK_R i NK_D , je 33000 n.j. (Tabela 2), i rastom neto dohotka nezavisne trgovinske kompanije u zemlji „D“ (neto dohodak NK_D je 10500 n.j.) (Tabela 2).

Sada posmatramo poslovni ambijent TNK, koja sprovodi jedinstvenu poslovnu strategiju na svetskom tržištu u prisustvu međunarodnog poreskog planiranja. Analiziramo poslovne transakcije između matične proizvodne kompanije u zemlji rezidentstva, MK_R (gde je stopa ostala ista kao u zemlji „R“, 10%) (Tabela 2), koja po transfernim cenama isporučuje gotove proizvode zavisnoj trgovinskoj filijali u zemlji destinacije, SF_D (gde je stopa, takođe, ostala ista kao u zemlji „D“, 30%) (Tabela 2). Ciljna funkcija je maksimiranje neto dohotka na nivou TNK. Pošto je jedinstvena poreska komponenta u kompetenciji centralnog menadžmenta, rezultanta međunarodnog poreskog planiranja i valorizacije međukompanijskih transakcija prema transfernim cenama, odnosno, rezultanta konvergencije ekonomskih ciljeva članova grupe povezanih lica je rast neto dohotka na nivou TNK (na 35000 n.j.) i smanjenje neto dohotka strane filijale u zemlji destinacije (na 3500 n.j.) (Tabela 2).

Iako su startni dohoci iz redovnog poslovanja pre oporezivanja bili identični u oba poslovna ambijenta (40000 n.j.), zbog mogućnosti međunarodnog poreskog planiranja, TNK ostvaruje veći neto dohodak (35000 n.j.) u odnosu na ukupan neto dohodak dva nezavisna entiteta (33000 n.j.). Rast neto dohotka grupe povezanih entiteta, za 2000 n.j. (Tabela 2), rezultat je izolovanog uticaja razlike u poreskim stopama na realokaciju međunarodnog dohotka iz zemlje sa višim porezom na dohodak korporacije (30%) u zemlju sa nižim porezom na dohodak korporacije (10%). Drugim rečima, međunarodno poresko planiranje je obezbedilo TNK poresku uštedu od 2000 n.j. Nezavisni entiteti, dve „nacionalne“ kompanije su hendikepirane, jer nemaju

Tabela 2 Valorizacija efekata realokacije međunarodnog dohotka na smanjenje poreza na nivou TNK

Alokacija neto dohotka između nezavisnih entiteta (u novčanim jedinicama)	
Poslovne transakcije nezavisne proizvodne kompanije, NK_R , u zemlji „R“	
1. Prihodi od prodaje gotovih proizvoda	100000
2. Nastali troškovi i izdaci	75000
3. Dohodak iz redovnog poslovanja pre oporezivanja	25000
4. Porez na dohodak korporacije (10%)	2500
5. Neto dohodak	22500
Poslovne transakcije nezavisne trgovinske kompanije, NK_D , u zemlji „D“	
1. Prihod od prodaje robe	200000
2. Troškovi nabavke gotovih proizvoda	100000
3. Nastali troškovi i izdaci	85000
4. Dohodak iz redovnog poslovanja pre oporezivanja	15000
5. Porez na dohodak korporacije (30%)	4500
6. Neto dohodak	10500
Realokacija neto dohotka između zavisnih entiteta (u novčanim jedinicama)	
Poslovne transakcije matične proizvodne kompanije, MK_R , u zemlji rezidentstva	
1. Prihodi od prodaje gotovih proizvoda	110000
2. Nastali troškovi i izdaci	75000
3. Dohodak iz redovnog poslovanja pre oporezivanja	35000
4. Porez na dohodak korporacije (10%)	3500
5. Neto dohodak	31500
Poslovne transakcije zavisne trgovinske filijale, u zemlji destinacije	
1. Prihod od prodaje gotovih proizvoda	200000
2. Troškovi prodaje? Troškovi nabavke gotovih proizvoda	110000
3. Nastali troškovi i izdaci	85000
4. Dohodak iz redovnog poslovanja pre oporezivanja	5000
5. Porez na dohodak korporacije (30%)	1500
6. Neto dohodak	3500

Izvor: Autor

moгуćnost međunarodnog poreskog planiranja, zbog čega ukupno plaćaju veći porez, za 2000 n.j. i posleđično ostvaruju lošiji ukupan poslovni rezultat.

Rast međunarodnih razlika u stopama poreza na dohodak korporacije podstiče međunarodnu realokaciju dohotka. Ukoliko je veća međunarodna razlika stopa poreza na dohodak korporacije, utoliko je veća korist od manipulacije u oblasti određivanja cena za međukompanijske transakcije. Sve dok postoje

razlike u stopama poreza na dohodak korporacije između zemalja, postoji realan podsticaj za TNK da lociraju svoj dohodak u zemljama s niskim porezima, a svoje troškove u zemljama s visokim porezima.

EFEKTI REFORMSKIH TENDENCIJA EU

Kada realokaciju međunarodnog dohotka posmatramo u kontekstu četiri alternativna metoda, kojima zemlja

rezidentstva može reagovati na prethodni porez zemlje destinacije s ciljem ublažavanja međunarodnog dvostrukog oporezivanja, u poziciji smo da formulišemo sledeće komentare:

- Kada zemlja rezidentstva TNK primenjuje metod kredita za strani porez, tada podsticaj za realokaciju zavisi od dostignute pozicije TNK u vezi kredita za strani porez (da li se TNK nalazi u poziciji deficita kredita ili u poziciji suficita kredita) i od zakonom predviđene mogućnosti da se odloži plaćanje poreza u zemlji rezidentstva (da li matična TNK može da iskoristi višak kredita, prenošenjem unazad ili unapred).
- Kada zemlja rezidentstva TNK primenjuje metod izuzimanja ili metod odbitka stranog poreza, TNK uvek ima podsticaj da realocira međunarodni dohodak u zemlju s niskim porezima.
- Kada se izgrađuje nov poreski sistem koji će „pokrivati“ određenu teritoriju (EU), tada TNK Evropske unije ima podsticaj da realocira dohodak izvan teritorijalnih granica EU-28, u Republiku Srbiju, na primer.

EU je u bliskoj prošlosti pristupila intenziviranju pitanja suštinske reforme poreza na dohodak korporacije, posredstvom fazne primene „zajedničke konsolidovane osnovice poreza na dohodak korporacije“ (CCCTB), u cilju afirmacije globalne konkurentne superiornosti EU. U svitanje evropskog poreskog diskursa, koje reakcije se mogu očekivati na tlu Republike Srbije? Pre svega, esencija tekućih i perspektivnih evropskih reformskih tendencija može redukovati nacionalni poreski suverenitet zemalja koje gravitiraju evro zoni, uključujući dve centralne implikacije na domete međunarodnog poreskog planiranja u Republici Srbiji.

Prva implikacija ukazuje na atraktiviziranje neporeskih instrumenata za unapređenje konkurentnosti privrede Republike Srbije. Evropska unija se opredelila za dvostranu kombinaciju nadnacionalne uniformnosti, u smislu jedne, konsolidovane poreske osnovice na nivou Evropske unije, i nacionalne autonomnosti, u smislu različitih poreskih stopa na nivou 28 članica Evropske unije. RS ovu dvostranu strategiju mora trostrano razumeti:

- kao delimičan gubitak kontrole na segmentu sistema poreskih podsticaja,
- kao indikator tendencije smanjivanja značaja strategije „trka do dna“, tj. smanjivanja značaja poreske konkurencije na segmentu stope poreza na dohodak korporacija, i
- kao inhibiranje razvojno-propulzivnog potencijala poreskog preferencijalnog instrumentarija, u korist rasta relativnog značaja neporeskih subvencija.

Pošto se utvrđuje jedna, evropska poreska osnovica, Republici Srbiji se implicitno redukuje mogućnost da poreskim podsticajima autonomno niveliše efektivan poreski teret korporacija, odnosno, da setom poreskih preferencija utiče na mobilizaciju internacionalnog kapitala. Pošto se sužava mogućnost takmičenja variranjem veličine poreske osnovice, preostaje mogućnost takmičenja variranjem visine poreske stope. Da li strategija atipično niske poreske stope od 15% (do 2012, stopa je iznosila 10%), koju u EU još jedino koriste Bugarska (10%), Kipar (tradicionalno je koristio stopu od 10%, da bi od 2013. godine povećao stopu na 12.5%, koja je i danas aktuelna) i Irska (12.5%), može biti efektivan instrument za promociju ekonomskog prostora Republike Srbije? Ne, RS je završila svoju trku od „vrha“ (1992. godine) do „dna“ (2012. godine) (Službeni glasnik Republike Srbije, 25/01, 80/02, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/2013, 68/2014).

RS je realizovala impresivan trend smanjenja stope poreza na dobit preduzeća. Tadašnji činioci vlasti (1992.) startovali su sa fantastičnim nivoom stope od 40% (Službeni glasnik Republike Srbije, 76/1991), da bi, u 1994. godini, stopu smanjili na 30% (Službeni glasnik Republike Srbije, 43/1994). Potom, činioci vlasti su, 01.01.1999. godine, smanjili stopu sa 25% na 20%, tako da je stopa u RS po prvi put bila niža od korespondentne „prosečne stope“ poreza na dohodak korporacije zemalja članica EU (26%). Međutim, strategija redukcije poreske stope nastavila je da opčinjava i naredne generacije činioca vlasti koji su, „zaboravljajući“ na internacionalni aspekt poreskog sadržaja, „stigli“ do 2012. godine i ustanovili „atipično smanjenje stope“ na 10% („dno“).

Koje komentare zaslužuje prezentirani regresivni scenario (1992-2012)? Prilikom oporezivanja TNK, svako redizajniranje poreza na dohodak korporacije u zemlji destinacije, u RS, mora biti integralno posmatrano sa korespondentnim poreskim efektima u zemljama rezidentstva TNK, u zemljama članicama EU. Kada je stopa u RS ispod „prosečne stope“, a posebno kada je znatno ispod „prosečne stope“ razvijenih zemalja, tada TNK u većini razvijenih zemalja više nisu u poziciji „suficita kredita“, već dospevaju u poziciju „deficita kredita“. Drugim rečima, kada je stopa u zemlji destinacije niža od kreditnog limita zemlje rezidentstva matične TNK, tada su poreski zahtevi zadovoljeni, jer TNK ima suficit neiskorišćenog (odobrenog) kredita od strane svoje zemlje rezidentstva. Tada, svako dalje snižavanje stope umanjuje relativan značaj same poreske subvencije, i povećava relativan značaj neporeskih subvencija, koje tek treba zadovoljiti. Izvlačeći jasan presek prethodno prezentiranih stavova, ukazujemo da je strategija kontinuiranog smanjenja stope (1992-2012) oduzela porezu na dobit preduzeća status ekskluzivnog posednika komparativnih prednosti za mobilizaciju stranog kapitala.

Vlada Republike Srbije je u 2013. godini startovala logiku diskontinuiteta u odnosu na prethodni dvadesetogodišnji period „proevropskog dizajniranja“ poreza na dobit preduzeća, povećavajući stopu sa 10% na 15% (prosečna stopa u EU-28 bila je 22.75% u 2013. godini, odnosno, 21.34% u 2014. godini). Tako smo svi zajedno još jednom na „početku“ (2013-2014). Pred Vladom stoji krupan upitnik u vezi sa mogućnošću da, posredstvom neporeskih subvencija, uključujući i ekstremne strane zahteve za direktnim snižavanjem cene odvijanja registrovane preduzetničke aktivnosti u privredi RS, reorganizuje realizaciju konkurentskih nastojanja za privlačenjem stranih investicija. RS se danas suočava sa naglašenom potrebom rebalansiranja odnosa na relaciji neto priliv internacionalnog kapitala - neto gubitak javnog prihoda po osnovu vanstandardne redukcije poreske stope.

Druga implikacija ukazuje na to da se u RS ne može očekivati rast naplaćenog javnog prihoda po osnovu oporezivanja TNK, već prolongiranje međunarodnog (TNK) pritiska na budžet Republike Srbije.

Doajeni među starim članicama Evropske unije, koji se i sami suočavaju sa neuspehom Lisabonske agende i užurbano rade na implementaciji strategije Evropa 2020 (EC, 2010), izabraće definiciju i način podele konsolidovane osnovice, odnosno, eksterni „link“ prema zemljama van EU-28, ali tako da prevashodno odgovaraju interesima evropske transnacionalne (multinacionalne) korporacije. Konsolidacija poreske osnovice na nivou evropske MNK daje mogućnost centralnom menadžmentu da, u kombinaciji sa instrumentima međunarodnog poreskog planiranja i efektima ratifikovanih bilateralnih ugovora, smanji poresko opterećenje evropskih filijala prisutnih u RS. Kombinacija notiranih faktora objektivno može implicirati smanjenje prihoda od poreza na dobit preduzeća, tj. može prolongirati postojeći pritisak na budžet Republike Srbije (prihod od poreza na dobit preduzeća u RS standardno je ispod 1.5% BDP, što je gotovo dvostruko manje od proseka EU).

Prvi zadatak Republike Srbije mora biti vešta navigacija kroz proces „pravog“ javno-privatnog partnerstva. RS mora pažljivo ući u interaktivno partnerstvo sa krupnim evropskim transnacionalnim (multinacionalnim) korporacijama, kofinansirajući i koprodukujući vitalne komponente javno-privredno-političkih rezultata, u atmosferama kooperacije i konkurencije. Nacionalni javnofinansijski i ekonomsko-socijalni rezultati treba da budu postignuti prema uslovima poroznih granica između javnog i privatnog sektora, na jednoj strani, i između oblasti domaće i strane ekonomske (poreske) politike, na drugoj strani.

ZAKLJUČAK

Predugo je aura intravertnosti tonirala sadržaj javnih finansija. Lokalna obojenost i nacionalna predodređenost, odnosno, poželjnost razvoja javnih finansija prema nacionalnim parametrima, u međuvremenu je preosmišljena. Globalni izazovi su dodali nove funkcije nacionalnim javnim finansijama, u kontekstu reakcije na globalizaciju njenih glavnih aktivnosti i kompetencija.

Rastuća kompleksnost međunarodnih ekonomskih odnosa apostrofira značaj internacionalnog aspekta

oporezivanja korporativnog sektora. Globalizacija praktično znači da je transnacionalna korporacija poreski obveznik više zemalja, uslovljavajući preklapanje nacionalnih poreskih jurisdikcija i otvarajući krupno pitanje međunarodnog dvostrukog oporezivanja. Pošto aktuelni globalni poreski sadržaj reprezentuje disharmonija između nacionalnog poreskog sistema, na jednoj strani, i međunarodno efikasne alokacije resursa i pravične raspodele međunarodne poreske osnove, na drugoj strani, nastavlja se traganje za metodološkom formom koja može optimalizovati teret međunarodnog dvostrukog oporezivanja.

Međunarodno poresko planiranje, kao neposredan izdanak disharmonične oficijelne procedure međunarodnog oporezivanja, može poprimiti različite forme. Istraživanjem efekata osnovnih oblika međunarodnog poreskog planiranja došli smo do konkretnih rezultata.

Transnacionalna korporacija može da, osmišljenim restrukturiranjem globalnih poslovnih transakcija, ostvari „ekstra“ smanjenje efektivnog poreskog tereta, u komparaciji sa nivoom poreskog tereta koji je standardno predviđen u okviru oficijelno ustanovljene procedure međunarodnog oporezivanja (OECD). Ova konstatacija je direktno izvedena iz prve istraživačke hipoteze, koja apostrofira postojanje inverznog odnosa između dužine perioda odlaganja repatrijacije stranog dohotka iz strane filijale u matičnu korporaciju u zemlji rezidentstva, na jednoj strani, i efektivnog poreza koji plaća rezidentna matična korporacija (TNK), na drugoj strani.

Ukoliko je veća međunarodna razlika stopa poreza na dohodak korporacije, utoliko je veća korist od manipulacije u oblasti određivanja cena za međukompanijske transakcije. Sve dok postoje razlike u stopama poreza na dohodak korporacije između zemalja, postoji realan podsticaj za TNK da lociraju svoj dohodak u zemljama s niskim porezima, a svoje troškove u zemljama s visokim porezima. Na osnovu prezentiranih konstatacija možemo odbraniti drugu istraživačku hipotezu i zaključiti da rast međunarodnih razlika u stopama poreza na dohodak korporacije podstiče međunarodnu realokaciju kapitala.

Potvrđujući treću hipotezu rada, u istraživanju smo eksplicitno došli do zaključka da, prilikom definisanja metodologije i valorizacije efekata oporezivanja TNK, svako redizajniranje poreza na dohodak korporacije u zemlji destinacije kapitala, u Republici Srbiji, mora biti integralno posmatrano sa korespondentnim poreskim rešenjima u zemljama rezidentstva TNK, u zemljama članicama EU. Aktuelne reformske tendencije u EU dvostrano utiču na domete poreskog planiranja u Republici Srbiji, u formi atraktiviziranja neporeskih instrumenata za unapređenje konkurentnosti privrede RS, i u formi prolongiranja međunarodnog pritiska na budžet Republike Srbije.

Osnovne afirmativne specifičnosti ovog rada reprezentuju standardna metodologija, originalna ilustracija tretiranih problema i argumentovana obrazloženja dobijenih rezultata. Osnovni nedostatak ovog rada je parcijalan pristup analiziranoj problematici, pošto brojni respektabilni instrumenti međunarodnog poreskog planiranja nisu uključeni u analizu.

Rad je značajan za akademsku zajednicu, ali i za kreatore poreske politike. U Republici Srbiji su relativno retke analize multidimenzionalnih pitanja međunarodnog poreskog planiranja i/ili sličnih problema iz šireg korpusa „međunarodno oporezivanje“. Republika Srbija se u ovoj oblasti nalazi na začelju grupe zemalja Jugoistočne Evrope, zbog apsolutnog odsustva normativnog i praktičnog razvoja, posebno na segmentu administrativne kontrole transfernih cena. Ovaj rad može biti inspirativan za istraživače koji su u profesionalnom radu tangentni sa fokusiranom tematikom. U daljim istraživanjima pažnju treba usmeriti na petnaest otvorenih pitanja koja je OECD istakla u akcionom planu za 2014. i 2015. godinu.

Rad je praktično značajan i problemski ilustrativan za kreatore poreske politike Republike Srbije, pošto ukazuje na kompleksnost i izazove međunarodnog poreskog planiranja. Sprovedeno istraživanje nam omogućuje da, za potrebe kreatora poreske politike Republike Srbije, formulišemo konkretne instruktivne poruke.

Prvu instruktivnu poruku inicira pitanje efekata odlaganja repatrijacije međunarodnog dohotka: Kada je u pitanju pozicija zemlje plasmana kapitala, pozicija Srbije, koji su objektivni potencijali poreskog preferenciranja korporativnog sektora u pogledu privlačenja stranog kapitala? Apostrofiramo granični primer metoda kredita za strani porez. Kreatori poreske politike moraju imati u vidu da zemlja porekla kapitala aktivira vlastiti poreski režim u momentu repatrijacije dohotka, koji može imati i negativne posledice za prethodno odobrene poreske podsticaje u zemlji plasmana kapitala. U meri u kojoj poreski podsticaj zemlje plasmana kapitala rezultira poreskom obavezom koja je manja od poreske obaveze predviđene u zemlji porekla, odobrena poreska beneficija u zemlji plasmana može biti ponovo oporezovana u zemlji porekla. Ukoliko se prezentirani granični scenario realno odigra, tegoban kuriozitet je faktički transfer poreskih prihoda iz trezora zemlje plasmana (RS) u trezor zemlje porekla (EU).

Drugu instruktivnu poruku inicira pitanje efekata realokacije međunarodnog dohotka: Koji su osnovni metodološko-praktični izazovi tematike transfernih cena u RS? Rastući značaj TNK (MNK) u RS se ispoljava u nepostojanju nezavisnih preduzeća u brojnim privrednim delatnostima. Na rastuću složenost poslovanja TNK (MNK) treba odgovoriti simplifikacijom procedure oporezivanja, koja počiva na poznavanju prirode poslovne transakcije i na proceni rizika od pojavljivanja manipulacija transfernim cenama po pojedinim delatnostima/velikim entitetima. Zbog internacionalnih implikacija transfernih cena, tokom izgradnje sopstvene baze podataka, treba koristiti Amadeus bazu podataka – baza podataka uporedivih finansijskih informacija za javne i privatne kompanije u Evropi (<https://amadeus.bvdinfo.com/>). Poreska administracija RS treba da bude usmerena na aktuelan koncept „Prethodnog dogovora o ceni“. Rezultanta APA koncepta (Advance Pricing Agreement) je troškovno efikasan rezultat, ostvarivanje određenog nivoa smanjenja tenzije na relaciji obveznici – administracija uz najniže moguće ukupne troškove.

Treću instruktivnu poruku inicira pitanje aktuelnih i perspektivnih reformskih poreskih tendencija: U pogledu mobilizacije kapitala razvijenih zemalja,

do koje granice je u zemlji plasmana kapitala, u RS, opravdano primenjivati strategiju smanjenja stope poreza na dobit preduzeća? Reper je uporedan odnos visina poreza plaćenog u zemlji plasmana kapitala i stranog poreskog kredita u razvijenoj zemlji porekla kapitala.

Prethodno saopštene instruktivne poruke su utemeljene ideje koje se sa različitih problemskih „strana“ slivaju u jedinstveno „izvorište“: karakter i potencijali poreskog sistema su verna refleksija dostignutog nivoa ekonomskog razvoja. Poreski sistem RS nije, niti može biti, individualni „prethodnik“, već samo „uporednik“, a najčešće je „sledbenik“ dostignutog stepena ukupne ekonomsko-tehnološko-socijalno-političke emancipacije. Razvojno propulzivni dometi poreskog sadržaja će se direktno proporcionalno povećavati sa intenziviranjem logističke podrške iz samog fundamenta razvoja: (a) iz razvoja međunarodno prepoznatljive preduzetničke klime, kada poslovni ambijent Republike Srbije postane proevropski izdanak, a ne rezultanta učestalih, kratkoročno omeđenih, nestrategijskih reformskih poteza; (b) iz profesionalne i institucionalne odgovornosti, kada kredibilitet ne samo poreskih aktera, kao pretpostvaka za uspeh i poslovnu reputaciju, postane suvišno pitanje.

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EVALUATION OF THE EFFECTS OF INTERNATIONAL TAX PLANNING

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In this paper, the effects of the essential instruments of tax planning related to the effects of the deferral of the repatriation of international income, the effects of the reallocation of international income and the effects of the current and perspective reform tendencies in the EU member countries on the achievements of international tax planning in the Republic of Serbia are valorized. By a meaningful restructuring of its global business transactions, a transnational corporation can gain an „extra” reduction in the effective tax burden, compared to the level of the tax burden standard, overlooked within the officially established procedure of international tax planning (OECD). As long as there are differences in the corporate income tax rates among the countries, there is a realistic incentive for TNCs to locate their income in low-tax countries and their expenses in high-tax countries. The actual reform tendencies in the EU have a two-sided influence on the achievements of tax planning in the Republic of Serbia, in the form of activating non-tax instruments for an improvement of the competitiveness of the Serbian industry as well as in the form of prolonging international pressure on the budget of the Republic of Serbia.

Keywords: international taxing, international tax planning, transnational corporation, repatriation of international income, reallocation of international income

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