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LEGAL ASPECTS OF TAX COMPETITION IN GLOBAL PUBLIC FINANCES

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Abstract: *Harmonization of national legislation with the acquis communautaire of the European Union is also present in the area of tax law. Beyond the trend of tax harmonization, there is a tax competition trend, which can be seen as a lack of cooperation between state tax jurisdictions in the struggle to attract foreign capital, mostly in the form of foreign direct investment. Subject of analyzed in this study are the positive and negative effects of tax competition in the overall tax burden, through legal analysis of tax incentives in the field of corporate taxation in the Serbian tax law. The goal is to commit specific proposals in order to preserve the integrity of the domestic tax system and protecting the rights of conscientious taxpayers.*

Key word*: tax competition, tax incentives, foreign direct investment, tax havens, vertical equity.*

Introduction

Tax competition and tax harmonization are significant trend in international tax law. Talk about it when the tax system of a country or other levels of territorial tax system affects the other collectives in terms of total tax revenue collected. (Goodspeed, Timothy J. 1998, 579-582). The issue of tax competition is nothing new in the tax law. At one time, economists Tiebout said of the possibility of voters to *"vote with their feet"* in the sense that they chooses for themselves the perfect combination of tax obligations and public sector contribution between competing tax jurisdictions. (Tiebout, C. y 416-424). Factors affecting the economic effects of tax competition are foreign trade, the existence of economies of scale, the "spillover effect" of public goods and the ability of the public sector to produce goods that reduce the private costs of production. (Wilson, J. D. y, 297-304). In theory, we recognize a distinction between horizontal and vertical tax competition. Horizontal tax competition occurs between units located at the same level for example, local or central, when the variable tax base (because only one of them determines the tax base). Vertical tax competition refers to units that are at different levels of government if they are taxed the same basis. We note that the vertical tax competition is an indirect cause

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of the multiple taxation, namely the form of cumulative taxation, which in modern finance is a common phenomenon, unlike the legal double taxation has negative repercussions on the status of the taxpayer.

1. Basic Principles of Tax Competition

The subject of analysis is the effects of horizontal tax competition which can be seen as "too much" or "too little" tax, depending on whether we are talking about upstream or downstream horizontal tax competition. (McGuire, Therese 1991, 153-164). It should be noted that the effects of tax competition depend on the particular form of tax that is the subject of "competition". Also, downstream tax competition is typical for countries with underdeveloped economies, predominantly open that rely in its tax system, mostly on capital taxes. Practice has shown that this results in a distortionary effect on capital allocation decisions, because the tax rates for these taxes are determined at a lower level than usual, which resulting in a lower quality of services provided by the public sector (ie, public goods are financed by collected tax revenue which is now in terms of competition is not enough). (Zodrow, George Meizskowski, Peter, Pigou, Tiebout 1986, 356-370). In the extreme form of tax competition model, it would mean that the tax rate can be reduced to zero (ie negative taxes), because competition supporters believed that capital does not benefit from public goods (although, in our opinion, this argument cannot be accepted because it marginalized the importance of public goods and their positive effects). The problem of “too much” or”too little” taxation would hypothetically be solved by taking into account the political ambience in which the decisions are made on the level of tax rates. In fact, it would be necessary to cumulatively fulfill two essential conditions of efficiency, namely: 1) the factors of production are equally distributed in both tax jurisdictions 2) to facilitate the efficient provision of public goods to all taxpayers. (Goodspeed, Timothy J. 1995, 279-296). In terms of asymmetries information and market imperfections it is possible that the first condition cannot be fulfilled, which the proposed solution cannot expect desired results. Destructive horizontal tax competition is observed at a time when the government has market power, a typical example is the taxation of exports of goods and services. (Goodspeed, Timothy J. 1998, 582). If a unit tightens tax rates to increase tax revenues, the question is how to influence the behavior of other units and its decision to change its rates? It could reduce their costs and thus lower the tax rate or that it increases the tax rate on the tax rates of the first unit (which would be possible only if the elasticity of the relative tax base and the tax rate is constant, and an increase in the tax rate affects increase revenue). It is certainly possible that the deadweight loss in the second unit drive her reaction be to reduce tax rates in order to rebalance (Beslez, Timothy J., Rosen, Harvey 1997). On the basis of the aforementioned, we can conclude that it is difficult to measure the effects of tax competition. These effects cannot be characterized as purely "bad or good", regardless of the circumstances in which tax competition takes place. The reasons for the effects of hard analysis can be summarized as follows: a) Tax Systems specialization are complex and differ greatly, b) there are numerous factors in addition to taxes, which affect the decision on the capital allocation of c) lack of knowledge without using input factors arising the expenditure of public goods, so we cannot say that competition is good or bad. Also, there are segments of economic (fiscal) policies that have the same goals for which the effects of competition cannot be noticed and evaluated in isolation from other factors. (Goodspeed, Timothy J., 1998).

2. Role of Multinational Companies in the Process of Tax Competition

The quality of public goods is a factor that greatly affects the tax competition. The difference in the amount of pores rates can come from a variety of demand for public goods. Higher tax rate in a given area can be a signal companies in this area has a highly skilled workforce and build infrastructure for which they are willing to pay a higher amount of tax. (Holz-Eakin, Douglas 1994, 13-20). At one time, making West Germany to impose a slight tax savings remained unsuccessful, just because of location factors of that country and its isolation from the world, in contrast to Switzerland, which imposed a tax of 30 percent on savings and succeeded in her purpose. In our opinion, factor of political, legal and economic stability in foreign countries also, determining the shape and the direction of tax competition. The investor is often more interested in the country where there is market freedom, effective judiciary and adequate protection of the rights of foreign nationals in relation to domestic residents, but for the low tax rates of local taxes. In the finance literature points out that tax competition in the area capital taxation is a negative phenomenon unlike other tax factors of production (labor). It is pointed out that large states impose harsher tax rate as opposed to the smaller states, because the erosion of the tax base per capita in them is less pronounced. (Bucovetsky Wilson J.D S. 1991, 333-350). Also, the process of its financial liberalization is measured through the volume of international trade, a factor that leads to heavier taxation of capital. (Bretschger, Lucas, Hettich, Franck 2010, 3-4). Globalization has many different effects on the amount of public expenditure and tax expenditure by limiting their fiscal sovereignty are qualitative changes in the structure of fiscal policy. In theory, the impact of globalization on fiscal policy is described by efficiency hypothesis (compensation). Although this hypothesis predicts erosion of the tax system, it is also suggesting that the government should increase public expenditure in order to ensure the welfare of citizens and protect them from economic risks that globalization brings. (G. Garrett., D., Mitchell 1998, 1-3). Tax competition in the EU has its roots in the Maastricht Treaty (1992). In fact, it created the conditions for the free movement of capital, goods and services in order to form a free labor market. However, this freedom resulted in the fiscal externalities in the Member States in the form of "moving" the domestic tax base. (Vogiatzoglou, Klimis 2004, 120). At this point, we must point out the problem of the delimitation of the fiscal impacts of a single internal market of the EU, on the one hand, and fiscal aspects of the same on the other side. The fiscal effects are reflected in the increased volume of foreign trade and investment agreements are secured, but its fiscal aspects in the form of tax competition between member countries could not have foreseen the contract and emerged as its side-effects. Therefore, the issue of tax competition subject of debate since the establishment of the common market, and received a special dimension in the establishment of economic and monetary union. The literature considers the optimal taxation of capital for the community of states or a small group in a situation where all agents face identical tax burden, regardless of the areas which do not invest capital. (Horst, T. 1980, 793-798). In contrast to the different tax rates faced by an investment of payments in respect of highly qualified labor force (taxation of human capital), which implies a differentiated taxation (due to different levels of knowledge), the taxation of capital there is a different situation. Tax competition is changing the structure of production costs, which do not originate from the use of various technologies and improved productivity (such as the taxation of human capital), but is the result of administrative regulations (tax laws). Although, tax harmonization of direct tax cannot be referred as a uniform solution to this problem, we should not forget the fact that the tax harmonization of indirect taxes once also been a controversial issue for fear of losing the quality of public goods that a Member State has provided to its citizens. Later it turned out that those fears were unnecessary, because in supranational organizations like the EU spillover effect of public goods means that the loss in the quality of public goods provided by each Member State may compensate for higher quality public goods by other Member States and intergovernmental agreements or interventions. (Lahiri, Raimondos 1998, 255-266).

Tax competition in the EU is not in accordance with the values covered by the contract, but we should not forget that it is not just about the economic integration of the EU member countries, but is part of the process of globalization, where lowering the corporate tax rate tax becomes a general trend in the world economy, which is not related to the EU. (Devereux, M., Pearson M. 1989, 6-13). For the investment of foreign capital, tax differentials are not so important factors of legal and political stability. However, the deployment of subsidiaries of multinational companies, the real seat of effective management, in accounting department certainly did. The question is how multinational company based in the United States can accomplish more in tax concessions (saving) through the mechanism of tax planning. Studies have shown that the average tax rate on income had a tendency of falling. (Grubert, Harry 2005, 113-115). One of the ways to make evaluation of company with major role in lowering tax rates is to identify the dominant major multinational companies that shape the business environment and the climate. In theory, it should emphasize two important hypotheses about which are the company's effort to reduce tax rates precious. The first hypothesis is based on the intentions of multinational companies to reduce excess foreign tax credits. Thus, for some companies *"The Tax Reform Act"* meant a reduction of tax rate from 46 to 34 percent. This meant that companies whose overall average tax rate is initially higher than 46 percent are now trying to take advantage of all opportunities to reduce foreign tax rates as opposed to companies whose tax liability is less than 34 percent (or was before changing Code). The second hypothesis assumes that for the company to significantly reduce the tax rate on income derived abroad for the branch, not low rates in the form of tax credits. Without the thoughtful changes that globalization brings with it capital, tax rates have not become more lenient in all industries, as for example in manufacturing industries such as electronic no significant decline. Opening the base company (or off-shore), the possibility of performing thin capitalization determined decisions of multinational companies in tax planning, as well as laws illegitimate tax evasion internationally. Luxembourg was the first approved the tax law allows the establishment of a holding company in the country. During the 80-ies of the last century, a large number of similar laws were adopted in the EU. In Ireland, for example was established the so-called international financial center in Dublin, which is the mode in which the company pays tax at a reduced rate of 10 percent, if it provides fiscal services to non-residents. Belgium has a similar law that coordination centers care providers, to serve advertising, consulting and research, allows keeping most of their profits. Other preferential regimes are found in Norway (where the benefits provided by companies that provide financial services), Italy (Trieste, there is an offshore center financially and insurance company), France (prefertial tax regimes enjoyed FUNDS effective administration) and others. (Pino, Carlo, 2000.) Multinational companies use tax differentiation as a platform for international sourcing plan. Thus, for example: coordination center in Belgium can assist branches in Germany to reduce its tax liability (both units are economical perspective of a multinational company, although the monasteries legal entities). In fact, the coordination center selling brand (name) for that branch to the same center receives a loan to pay for the service. This transaction reduces the taxable profit in two ways for transfer price reduces costs in the revenue branch (*transfer price*) and interest on the loan subsidiaries not included in the base, but since it rejects (*thin capitalization*). We note that the complex mechanisms of tax planning cause great damage to the budget, because the main taxpayers to shift the burden of their taxpayers with less economic power and for this behavior remain no sanctioned (the costs of such a lost tax revenue is difficult to assess). Only in the U.S. is considered that more than half of foreign companies only "virtually" meet its obligations to the state and that the losses to the budget exceeded the amount of 35 billion dollars. (Dicken, Peter, 1998, 247-250).

3. Positive and Negative Repercussion of Tax Competition

The classical theory of tax competition is based on two premises: 1) the level of total tax load for will eventually decrease 2) the tax burden will eventually shifted from mobile base (capital) to immobile tax base (labor and energy). (Herschel, Philipp 2011, 4-6). Significant increase in public expenditure during the 80s and 90s of the last century due to the fact that the 60s and 70s, countries had adopted the so-called program of “*welfare state*” that shows concern for its citizens by increasing the level of pensions and health care as well as other forms of social protection. These programs were created “*legal costs*” that were difficult to control, because the payment is due under the terms of which were not of a legal nature, but the size and the amount of transfer depended on demographics, health status, labor market development and more. (Cordes, Joseph, 2000, 98-99). Modern theory has a doubt at validity of these premises. It is pointed out, that in a world without tax competition the level of total taxation was much higher because the growth of public expenditure cannot be controlled (slow). Also, large budget deficits (caused by the state public loans) are not a long-term and sustainable solution for solving the gap between stagnant incomes and growing expenses. Over the last twenty years a lot of work had done on fiscal consolidation, which among other things depends on the increase in tax revenues. The budget balancing is reached by razing labor and capital taxes; although it is believed that in the absence of tax competition total revenues were higher, due to the fact that tax competition prevents the state to rely on equity (which is fiscally attractive solution for filling the state coffers) as a source of taxation. As we already mentioned, lowering corporate tax rate do not necessarily mean increasing the inflow of foreign investments (primarily green-field). In the absence of tax competition, tax profits would be tight, but the consequences of unfair tax competition are even more dangerous to the state budget. The solution to this problem is the consolidation of the tax base in respect of the principle of neutrality, equality between companies, revenue stability and more. Decisive facts in determining the properties of the taxpayer should be the country of earning income, not his residency through integration corporative and personal income. (Goretr J, Mooij R., 2001, 211-216). As an alternative model o taxation is so-called “dual models”, where income from labor and capital are taxed separately. Also, the absence of bilateral agreements between Member States creates a legal problem of double legal taxation which might be solve by adopting an adequate model of tax convention. (Nicodeme, Gaetan 2000, 38).

4. Legal Instruments for Tax Competition (OECD and EU Solution)

Significant document in international tax law is the “*OECD Report on Harmful Tax Competition”*. It provides the guidelines for determining the tax havens and preferential tax regimes, as well as proposed measures and instruments that states can relies on its combat with the effects of harmful tax competition. In this sense, the report proposed implementing the principle of "the 3 Rs"(refrain, review, and remove). This principle implies that Member States have the political responsibility and obligation to refrain from adopting new fiscal measures which encourages competition; to make transparent all the unfair tax practices and to remove from domestic tax law all forms of preferential tax regime for a period of five years. (OECD, 1998). This document also predicts the constitution of an international body called Forum on harmful Tax Practices), which will be responsible for the implementation of “3rs principle”. This document represents the first significant attempt to suppress harmful effects of tax competition, which empowers all unilateral, bilateral and multilateral efforts to achieve the state of global economic prosperity. (Wiener, Joann, Hugh, MJ Ault 1998, 601-602). The report focuses on geographically mobile activities, such as financial and other services and the provision of nonmaterial investments. The report takes into account the impact of the tax jurisdictions in financial decisions through solutions of corporate income tax. We must emphasize that the adoption of this document does not compromise route of freedom of Member States to create fiscal policy program, but it is the respect of certain international standards. This means that even, if one of the countries, see certain procedures as harmful tax competition, another country may so, nor these actions can’t be described as harmful under the conditions specified report. Thus, for example states can provide additional tax incentives aimed at increasing the flow of investments, but low tax rate by itself is not enough to make a finding existence of harmful actions, regardless of the other facts and circumstances. On the other hand, there are certain procedures that are *per se* forms of harmful tax competition. There are tax policies that aim to "deliberate shift" investments in certain countries that are not just "different desires in shaping the preferred level of spending and taxation." Moreover, they represent organized attempts to avoid tax jurisdictions country competitors in the battle for attracting foreign capital. As this phenomenon is present not only in the countries of the OECD, but also non-member states, led by the great efforts that the more they ratify the report mentioned in their domestic legislation. Especially significant is the second chapter of the Report which identifies the factors for identifying tax havens and preferential tax regimes. Certainly, this report does not identify any specific tax regime as harmful, but gives a general theoretical model for the recognition of such regimes. Here a distinction sandwiched between two groups, each having a low tax rate, but not included in the tax competition and other countries, low tax rates associated with special needs and the factors that are recognized as bad tax law. Namely, in the first case it is the countries that make generous returns, while in the second case it is the states that are in the exercise of budget revenues do not rely on taxation, there is a slight tax or a more favorable treatment of origin obtained from the ordinary. In the second case, it is a tax haven, which can be seen as a "tax jurisdiction in the event where there is no or nominal taxation only the present, along with the lack of administrative obligations on granting tax information in order to reduce the effective corporate income tax in such jurisdiction." A key factor for identifying tax havens is the absence of nominal taxation. Other factors that are necessary, but not obligatory are*:* the lack of exchange of tax information, lack of transparency in tax enforcement actions, legal and administrative fees and absence of some essential activities. We note that all the above conditions (except the first) resemble the "legal standard" whose contents must be determined in each particular case, depending on situational circumstances and social framework in which each country is located. Certainly, the lack of information sharing may represent more than just the process of unfair tax competition. It opens a suspicion to existence of illegal tax evasion or *"money laundering"*. Different regions may choose different tax regimes because they have different production technologies and their residents have different preferences. The problem is that the supply of public goods is not at an adequate level, so marginal utility of capital is more stringent tax in region. The efficient allocation can be achieved only by assigning "corrective subsidy" to every region in the amount of tax revenue that it reached, with the simultaneous transfer of income between their executive authorities. (Wilson, John Douglas 1999, 276).

The factors that are crucial for identifying preferential tax regimes are: existence of a ring-fenced regime, lack of transparency and lack of information sharing. Particularly important is the existence of so-called ring fenced regimes, which means that residents do not have a revenue stream using the relevant tax regime or when there are non-residents do not have access to the domestic market (here comes to the limitations of tax raids at some parts (branches) or the intrusion of certain market, which prevents the phenomenon erosion national tax base. The report suggests additional factors that must be taken into account in determining tax havens and preferential tax regimes such are: the inability to pimping international principles of transfer payments, variable rates and the tax base, the existence of secret provisions and generally promoting an idea of minimizing the importance of taxation (Commission of the European Communities, 1997). This document proposes 19 concrete measures to combat the effects of harmful tax competition, grouped into three areas: domestic legislation, tax treaties, and international cooperation. As far as national legislation, proposed the adoption of rules equivalent to the rule of controlling foreign companies in the country of residency "controlled foreign corporation (CFN)," because it contributes to limiting the harmful effects of tax competition (16 OECD countries have adopted this rule). Tax Treaties As an alternative measure, have many disadvantages because it can easily be misused, and so used by countries that are not party to the relevant tax arrangements (these contracts operate *inter partes* no *erga omnes*). We could say that the Forum has a *"quasi-judicial function"* as well as the function of mediating the dialogue between Member States and the Member States. One of the first tasks of the Forum was to make a list of the countries tax havens adversaries for the purposes of concluding agreements on the exchange of information with these countries. Ministers of finances of EU member states in year 1997 in Luxembourg adopted *"Code of conduct"*. Objectives of this document are complementary to the objectives of the *OECD Guidelines on unfair tax competition,* but the difference is that the EU required taking certain actions as opposed to from non-member countries of the OECD, which are not EU members! United Nations endorsed the adoption of these international laws because they hold influential antiabuse legislation (thus helps preserve the leading position of multinationals from the U.S.!) as relativization bank liabilities to keep the business secrets contributes to the implementation of international initiatives of the G7 meeting in Birmingham to crack down on money laundering and other forms of financial crimes. Despite these shortcomings documentation intended and different motives of the EU and the U.S. for their effective application, there is no doubt that they represent an important mechanism for thwarting *"race to the bottom"*, which leads among tax jurisdictions. Therefore prevented the allocation of investment decision motivated solely by tax considerations, increasing the overall tax burden on less mobile factors of production and limit the opportunities for the exercise of legitimate illegitimate tax evasion. It should be noted that EU has made significant progress in the area of direct tax policy, after a period of ignorance and political contention. EU voluntaries experimenting with instruments is the fight against harmful tax competition, which is a genus indicate the phrase *"rules of conduct companies"*. Rather, it's about spreading good practice and convergence of fiscal goals of member countries. (Radaelli, Claudio M. 2003, 513-514). We should consider that desired objectives can be achieved not only by making special tax law, but by using the so-called *"open method of coordination"* (which is based on shared beliefs, learning, experience and good practice) through a common platform. Nevertheless, regulations are not completely identical to the open method of coordination, because it only wants to establish a *"common direction beliefs"* about what is acceptable and what is harmful tax competition, not an ambitious goal of creating a common EU tax policy (which is in the field of direct taxation infeasible due to the unwillingness of states restricting globally a fiscal sovereignty). We note that the above-mentioned coordination originate in the so-called soft (secondary) EU law that is of primary importance in areas where it is difficult to reach a political consensus. (Snyder F. 2001,197-224). Nevertheless, the question of fairness of practical application of the *Rules* remains! Question is whether an alternative way of solving the problem of tax competition is a good way to solve problems. Critics objects to the fact that the application of the *Rules* first began in secret, without the involvement of representative bodies of the Member States. (EU Corporate Tax Reform 2001, 190-195). The regulations are not fully met the three core values of the open method of coordination. These are: transparency, inclusion of all stakeholders in meaning o of territorial application and therefore the question of legitimacy. Notwithstanding these criticisms, we must point out that the rules do not work already developed in the shadow of EU tax law, because the success of coordination based on the traditional instrument of taxation both policy and campaigns at the OECD. Its use has already brought some results, because the state while creating (derogating) tax legislation, takes into account the criteria set forth in the Regulations. Off course, in addition to the legal, economic and political significance of this international tax document we must emphasize its ideological significance (to create a common awareness of the importance of eliminating the effects of harmful tax competition between countries). That is the first step towards to making efficient European legislation. In terms of globalization, document gains even greater practical importance, because it is a *"barrier"* to aggressive tax planning of multinational companies.

5. Experience of Serbian Tax Law

In Serbian corporate tax legislation we can see the obvious intention of the legislature to encourage capital investment in certain areas and to stimulate employment. Nevertheless, we have to wonder how these incentives are really at the service of these functions? In a country where the company does not generate any income or modest one, the scope of this exemption is very questionable. We cannot claim that the tax exemptions (holidays) helps newly formed company, when those in the first years of operation anyway generate significant profits, which raises the question of justifying their existence. On the other hand, experts warn that the tax holidays eroding tax base and encourage a short-term investments. If we combine these tax incentives with tax rate (which is one of the lowest in the region at only 12 percent) the question is why there are not more foreign investments in Serbia? The main factor for investment is political (in) stability in the country. In addition to this factor should be considered, also the efficiency of the legal system, which has great significance for the non-residents in protection their rights and interests in the domestic territory. Mainly the transparency, certainty and determination of the tax laws, because today there is a real and logical need to protect the rights of taxpayers and the codification of the tax laws, so that they can at any time be able to foresee the consequences of their decisions. In Serbia, the rights of taxpayers are not protected at an adequate level, as evidenced by the lack of associations of taxpayers' ombudsman to deal with their protection, and the absence of charter that would protect their interests based on those existing in developed countries. However, in terms of transparency of tax regulations, we have to consider that tax laws are very complex and that the request for definiteness and clarity of legislation (*lex certa*) in the field of tax law relativized. For most ordinary citizens tax laws are unclear and for their introduction it's necessary to engage experts (*tax advisors*). However, tax policy makers should keep in mind that these incentives may be misused for the purposes that the legislator had in mind. Many studies have pointed out that, in contrast to the OECD countries that attract foreign investment with effective financial incentives (offer greater administrative flexibility of tax incentives), countries that are not members of OECD used traditional tax incentives. Tax credits and accelerated depreciation provisions in *Serbian Law on Income Tax* provides reliefs given in respect of foreign investments. The most significant relief is *the investment tax credit*. The Law provides that a taxpayer who makes profit in a newly established unit in an underdeveloped area can reduced tax obligation for a period of two years made in proportion to the share gain, provided a separate recording of the unit. Also, taxpayers who make investments in fixed assets in own activities shall be entitled to a tax credit of 20 percent of the investment, provided that the loan does not exceed 50 percent of the calculated tax for the year in which investment is made or first right a tax credit equal to 40 percent of the investment in fixed assets, but it cannot exceed 70 percent of output tax. The taxpayer has a right to transfer the unused portion of the tax credit on the tax bill in future periods, but for no longer than 10 years. Certainly, in the service of stimulating the development of new technologies and the provision of accelerated depreciation, for which the taxpayer is entitled to a write-off of fixed assets at rates which can be up to 25 percent more than required. Accelerated depreciation is used for assets that serve to prevent pollution of water, air and soil pollution, noise reduction, energy conservation, afforestation, waste collection and disposal as industrial raw materials, but also for staff education and training. We note that this tax credit is a function of environmental taxes (which in Serbia do not exist). The question is whether these provisions are sufficient to contribute to environmental protection. Correlated to the incentives in the name of attracting foreign investment, the question is whether, in the absence of strict environmental standards they can actually achieve the intention of the legislator? Unfortunately, one of the reasons why foreign companies open their branches and moving plants, is the fact that the environmental benefits in domestic law corresponds to the environmental tax cannot be collected by force. Their height is not set at a level that would cause a change in the behavior of taxpayers. Therefore, it is necessary to establish a trade-off between the need to attract investment and protection of nature, because natural resources are non-renewable resources (which should be left to future under siege). Again, the absence of proper environmental tax, low tax rate on corporate income contributes to bad reputation of the domestic tax system. The consequence is epithet country with unfair tax competition, and that is hard and long to repair. Although the period of exemption of tax liability (provided investment tax credit) on the appearance of a long acting, with the right to question whether it is sufficient to encourage investment in new technological and action, since they require a much longer period of time. In these terms, we can see clearly the intention of the legislator to support the development of underdeveloped and rural areas of the country, contributing to more optimal achievement of the objectives of regional development policy, notably reducing the disparities in levels of development between regions in Serbia. The purpose of achieving long-term goals of economic development policy, is the article 48a of *Corporate Income Tax Law*, because it provides for the recognition of a tax credit of 80 percent of the actual capital expenditures for activities, provided that the accordance with the law which determines the classification of activities and register of classification units, classified in one of the following industries: agriculture, fisheries, manufacturing of textile yarn and fabrics, and more. Many of the activities for which it was designed such tax relief is a *conditio sine qua non* for the production and provision of public goods. That implies that importance of the investment tax credit is indisputable. It should be noted that tax incentives have experienced significant transformations (release) in the new EU member states in accordance with *"Code of Conduct"* and legal assistance in respect of *"Fiscal State Aid"*. Today, the incentive in the form of tax holidays in much less common in the older member states than before. Although, the economic situation of these countries allows that tax incentives in the form of tax exemptions are no longer needed, be sure that their experience in implementation must be respected by the less developed countries (at least in terms of adequate adjustment of incentives). Therefore, you should comply with the latest modification of benefits, which are granted in developed countries, mainly in the free regions and underdeveloped areas.

6. Conclusion

As for the argument of unfair tax competition, we must once again return to the tax rate in Serbia. We think that a similar differentiation should be applied in Serbia because, in this way, mitigate the effects of adverse signaling effects of taxes, and also enable the development of certain economic activities. Radical redesign of tax incentives would mean keeping only the most efficient (*investment tax credit*). We think that all tax solutions that are obsolete and rare in practice, should be removed from the legal system. Why? Therefore, if you have no need for their implementation, there is no need to subject the social relationship to be governed by the tax legal norm. Such solutions (regulations) are *"dead letter"*, which has its opportunity cost (because resources can be used alternatively to the adoption of new and modernization of its). The requirement for quality reform is precise and detailed statistics to determine the expenditure in national legislation. In many countries in transition, tax expenditures are the result of economic studies, or if they did, their effects are not tracked in order to measure their effectiveness. Because of the legal uncertainty caused by wrong standardization of tax expenditures and lack of coordinated communication between the executive and the legislature, the question of existence tax incentives is very important. However, for now we can only speak on the harmonization of certain segments of the system of taxation, and not on the harmonization of the corporate tax. Existing guidelines in the area of harmonization primarily wanted to solve the problem of double taxation of dividends and tax issues related companies. However, with the strengthening of harmful tax competition in the area of harmonization eventually spread. The idea of introducing federal company income tax did not receive a good response. The introduction of a supranational tax would mean that a single tax authority at EU level shall administer, and the revenue from such a tax would be poured into the EU budget and

Member States (but should generally spend in community activities). Of course, in this situation there would be a waiver of a portion of the fiscal sovereignty of member states, which is very sensitive national issue. Therefore, it is perhaps the most realistic model of tax harmonization the *"compromise model"* which implies that a tax is levied on the same or similar manner in all the Member States, but that there is freedom of introducing some other taxes. This solution is logical, given the specifics that determine planning and development of the tax system of each country, such as economic development, heritage, demographic structure, training and expertise of the staff and more. (G.Ilić-Popov, 2008). The experience of developed countries should serve fiscal policy makers in Serbia during period of redesign legal solutions in the system of corporate tax incentives.

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PRAVNI ASPEKTI PORESKE KONKURENCIJE U SVETLU GLOBALNIH JAVNIH FINANSIJA

Rezime*: Harmonizacija domaćih pravnih propisa sa komunitarnim pravom Evropske Unije, prisutna je i u oblasti poreskog prava. Pored trenda poreske harmonizacije prisutan je i trend poreske kokurencije, koja se može shvatiti kao odsustvo saradnje između poreskih jurisdikcija država u borbi za privlačenje inostranog kapitala, najčešće u vidu direktnih stranih investicija. Predmet analize u ovom radu jesu pozitivni i negativni efekti poreske konkurencije na ukupno poresko opterećenje, kroz pravua analiza poreskih podsticaja za privlačenje inostranih kapitala u oblasti korporativnih poreza u srpskom poreskom pravu radi činjenja konkretnih predloga u cilju očuvanja integriteta poreskog sistema i zaštite prava savesnih poreskih obveznika.*

Ključne reči*: poreska konkurencija, poreski podsticaji, strane direktne investicije, poreski rajevi, vertikalna pravičnost.*