BASE TRIBUTÁRIA COMUM CONSOLIDADA: UMA NOVA PERSPECTIVA SOBRE UM PARADIGMA MULTIVARIÁVEL

COMMON CONSOLIDATED TAX BASE: A NEW OVERVIEW UNDER A MULTI-SHIFTING PARADIGM

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Summary
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Resumo

Convergência e harmonização são palavras que este trabalho utiliza para processar a necessidade das empresas por sistemas jurídicos que provejam condições equivalentes legais para que elas operem. No campo da convergência de bases de cálculo do imposto sobre a renda, foram criadas muitas formas, como SA, HST e CCTB, mas estas falharam em compreender que a necessidade de alinhamento legal deve vir acompanhada do respeito a um número de regras e princípios dos sistemas jurídicos envolvidos, modificando a discussão de apenas uma forma melhor de operação ou sistema melhor de alocação e se movendo adiante para encontrar soluções fora do espectro estrito das regras tributárias como os princípios contábeis internacionais e as regras de governança corporativa, como exemplos.
Palavras-chave: regimes de consolidação; regras antielusivas; SA, HST e CCTB.

Abstract

Convergence and harmonization are terms that this paper make use of in order to process the need of the business enterprises for legal systems that provides a legal level playing field for them to operate on. In the realm of convergence of the taxable basis for the income tax, many have been the approaches, such as the SA, CCTB and HST, but they failed to understand that the need for legal alignment must come with respect for a number of rules and principles of the legal system involved, shifting the discussion from just to search the best formulae to operate on and the best system of apportionment and moving towards to find solutions outside of strict sense taxation rules, such as in the international accounting standards and corporate governance ones, as examples.
Keywords: Consolidation regimes; Anti-avoidance rules; SA, HST and CCTB.

Introduction

As a starting point, it is needed to mention the importance and contemporaneity of the measures to avoid the artificial shifting of the taxable basis to lower taxation countries or, in the extreme cases, to the Tax Havens, the core of the so-called CFC (Controlled Foreign Corporations) legislation.

Obviously, this shifting can be prevented in three simple forms: using a worldwide taxation as a unilateral measure, using harmonization or engaging in a consolidation of the taxable basis and apportioning it to more countries with

a previous established set of qualification/quantification rules and formula to apportion the resulting taxes, as set forth in a tax treaty, a bi or multilateral measure.

Before laying down the framework in which this article will be presented, there is a need to clarify the methodology used in this paper, [3] which is a combination of the logic-semantic constructivism of Barros Carvalho (2008), Luhman's Systems Theory (2004) and Law and Economics.[4 and 5]

Even more, it is important to assert that this study will not present many quotations since it moves further from the current works on tax consolidation, offering a view that is driven by this method.[6]

Moving further into the framework, as a warning, it can be falsely inferred that this article does not believe in harmonization as a form to properly distribute the taxable basis because of the fluidity of this mechanism. And the great conflicts that can arise from that do not stabilize and correct the distortion that might be created by unilateral measures.

These strong objections to harmonization have to be taken aside because all measures to avoid this artificial shifting of the taxable basis (unilateral and multilateral) can only be achieved and bring proper results if a minimum harmonization is held, as this minimum common denominator serves as a stability mechanism that balances each set of state produced rules involved when a multinational corporation carries on a business.

Regarding this matter, a forced, vertical, directive (multilateral) coercive harmonization is the discussion being held in the European Community by dealing with the forms to avoid this phenomenon.

In this European approach, two are the preeminent models on this discussion, contraposing to the current Separated Account Approach (with the

3 The last version of this reference system is in: VITA, J. B. *Teoria Geral do Direito:* Direito Internacional e Direito Tributário. São Paulo: Quartier Latin, 2011.

4 Among others: ROEMER, A. *Derecho y economía:* una revisión de la literatura. Cidade do México: ITAM, 2000.

5 Specifically in Brazilian doctrine: CARVALHO, C. R. DE. DIREITO, ECONOMIA, TRIBUTAÇÃO. SÃO PAULO: QUARTIER LATIN, 2005; CALIENDO, P. *DIREITO TRIBUTÁRIO E ANÁLISE ECONÔMICA DO DIREITO:* UMA VISÃO CRÍTICA. RIO DE JANEIRO: ELSEVIER, 2009 & SCHOUERI, L. EDUARDO. *DIREITO TRIBUTÁRIO.* SÃO PAULO: SARAIVA, 2011.

6 As examples of different approaches to the subject relating to European consolidation regimes: GAMMIE, M.; GIANNINI, S.; OESTREICHER, A.; PARASCANDOLO, P. & SPENGEL. C. *Achieving a Common Consolidated Corporate Tax Base in the EU.* Brussels: CEPS, 2005; SCHÖN, W.; SCHREIBER, U. & SPENGEL, C. (editors) *A Common Consolidated Corporate Tax Base for Europe.* Berlin: Springer, 2010; SPENGEL, C. & ZÖLLKAU, Y. (editors) *A Common Consolidated Corporate Tax Base for Europe.* Berlin: Springer, 2008; WENDT, C. *A Common Tax Base for Multinational Enterprises in the European Union.* Wiesbaden: Gabler edition Wissenschaft, 2009.

inherent worldwide taxation approach): the Common Consolidated Tax Base (CCTB) and the Home State Taxation (HST)[7].

These approaches have many problems, such as compatibility to the EC Treaty and its fundamental liberties and, besides that, the will to provide more fiscal sovereignty and relinquish tax as an economical competitive aspect.

Summarizing, the aim of this work is to comprehend the problems under a different perspective instead of the operative aspects of such approaches, as the ideal form of the FA, moving further and seeing more than the economic and fiscal characteristics as challenges that can be raised against those models.

In order to do so, the final stage of this article uses Brazil (even though being outside the EC) as the framework to check some problems in the CFC/consolidation unilateral legislation and, as a consequence, find a goal into a minimum convergence/harmonization of tax systems and the consolidation of companies under those rules, in order to achieve a healthy fiscal concurrency.

This healthy concurrency happens when there is a minimum common ground for the multinational companies to operate with reduced compliance costs and maximum economic efficiency, casting aside, as much as possible, tax as an economic artificial incentive or disincentive to influence business decisions on how to allocate means of the company.

1 The global fiscal concurrency

As a framework for all those problems presented in the introduction paper, the fiscal concurrency plays an important role in order to direct the enterprise decision to allocate capital into one or another country.

Obviously, the structuring of a multinational company bases itself in a great deal of aspects, which are studied by the economists, but it is fair to assume that the tax burden is one of the main economic incentive or disincentive to attract a company to establish itself into a country.

As an example of why it happens, the fiscal aspect sometimes surpasses the logical business structure because it can mitigate the greater logistics costs.

Some countries use the fiscal aspects as a form to have some leverage. (e.g., a big market or the proximity to raw material).

7 For more information on the classical definition of these models: MICOSSI, S. & PARASCANDOLO, P. “Multi-National Enterprises taxation in the European Union: some views on options for an overhaul”. In: *European Tax Studies* 1/2010, p. 1-15.

With the great development of logistics and the communicative mechanisms, it is easier, now, to rapidly alter the business' structure in order to achieve a maximum rate of efficiency.

Since taxes are a main factor that interfere in the costs of multinational enterprises, some countries adapted themselves to count on this mechanism as a manner of competition.

This is the main reason why low-pressure countries are arising everywhere; it is very clear in Europe that there was a change after the Irish movement on decreasing its taxes, and was even stronger when the enlargement of the EC belt took place.

This fiscal concurrency is maximized because of the fundamental liberties, as the free flow of goods and capital.

In the further end of the lower tax scope, there are the Tax Havens, which are more linked to artificial structures and the related artificial shifting of the tax basis.

Obviously, the OECD movement to sanction those countries is on the move and has some modest results to show; that is why the countries adapted its rules to prevent tax avoidance and the erosion of the taxable basis.

This is the major core of the anti-avoidance tax rules because of the CFC legislations and the consolidation and transparency approaches.

These approaches are led by the old productive and richer countries, which want to preserve its taxable basis by avoiding the artificial structures and, besides that, by giving more importance to the intangibles instead of manufacturing.

In the first factor, there was a change of perspective in the global taxable basis allocation, in which there is the transition from territoriality to worldwide approach of the taxable incomes.

This means that the proper determination of the fiscal residence has become an important issue, and the so-called Tie Brake Rule is one of the greatest problems in this approach.

Regarding this matter, resembling a footnote, at least the new OECD model makes a strong point in applying the Tie Brake Rule of a valid company to all the other tax treaties, avoiding the improper (tax treaty) usage of tax treaties by companies that are not based in a country.

As a final note, some countries are shifting statuses by becoming exporters of capital, instead of importers, and strengthening its positions as important businesses centers.

It applies to Brazil, which is a high-tax pressure country and, also, is becoming a capital exporter.

1.1 State aid: Indirect form of concurrency between countries for economic development

Apart from those notes, regarding specifically taxation, it is important to point out that the concurrency to attract companies has a primary approach and a specific set of rules that can be summarized in the rules of international trading, such as the GATT/WTO system and the EC Treaty.

Both of them deal with the determination of the legality of incentives conceived by the countries in a direct (financial) or indirect (taxation) form.

To determine the legality or illegality of those state aids is a difficult task, because, for example, administrative practices can turn into an indirect state aid.

Obviously, the question behind the state aid is to determine if the states have the right to attract companies solely on a tax point of view.

Specifically here arises the beforementioned economic factors to attract companies, such as labor costs, raw materials and logistics (including taxes), affecting the price of the targeted market in comparison to what would be if it were produced there.

Even more, is the lenience of tax authorities in holding accountable artificial structures a form of aid?

Apparently, these individual and concrete facts are much more difficult to understand and to be sanctioned.

As a third sanctionable tax aid, there are the financial aids, that are linked to taxes and have to be sanctioned, such as loans with privileged regimes by means of the sole purpose to pay taxes, that are indirectly related to artificial (and sanctionable) tax aid.

Summarizing, taxes play an important role and can be deemed illegal state aid under the WTO and EC Treaty rules, but there must be created an artificial mean of distorting the commercial concurrency between national and international companies.

2 Consolidation of the taxable basis and CFC legislation: overlapping concepts

Firstly, the main causes for consolidation/worldwide taxation have to be explained from an economic point of view. In this case, from the state in which these rules are enforced.

Related to this, the reasons to attract the taxable matter can be divided in two main forms: the intangible capital attracts all incomes derived from the materialization of this capital (for example, production or sales), producing an increase in the taxable basis of the country where the company was founded; and the global consolidation of profits as a way to render null artificial structures which were created to be avoidable.

In order to better clarify the first hypothesis, it can be said that the development of the current economy tend to leave the intellectual property, the strategic decision and/or research and development to the country where the company was born.

On the other hand, some of the most significant and concrete activities, such as production, are transferred because of the economic factors stated before (labor costs, environmental regulation, among others). In addition, these are part of the company business', although do not happen in the source country in which the company is based, causing natural losses on levied taxes.

In this case, this attraction happens in order to link a company's global growth to the country where it was created, the first nation of residence, normally a developed one.

The second hypothesis is presented to fight against artificial structures. As an example, administrative and, sometimes, royalties costs are created just to shift the taxable basis to countries which have lower taxation than the residence ones.

Examples of international tax anti-avoidance rules vary from the transfer pricing rules to non deductibility of costs deriving from Tax Havens, crossing the consolidation based on fiscal transparency or the piercing corporate veil approach.

Both of the aforementioned hypothesis can be deemed to support the creation of consolidating rules, but just one of them is more closely linked to the so-called CFC rules, an anti-avoidance tax rule.

This perimeter of consolidation under the CFC rules normally use an approach that renders a mandatory solidification when there can be an artificial (or not) shift in the taxable basis and prevention of tax deferral as a planning mechanism.

Even more, these rules tend to operate automatically and do not take into account the substance of the operation.

It is fair to say that these rules can be deemed against the OECD model, as many authors emphasize, but remembering that the Commentaries to the Model (after 2003), especially number 23 regarding article 1, consider that these CFC rules are not in contrast to [8].

In the European case, the ECJ has deemed the CFC legislation, which is compatible, in some extent, to the EC Treaty, as set forth in the Cadbury Schweppes Case (Cadbury Schweppes plc vs. Commissioners of Inland Revenue, Case C-196/04, September, 12, 2006), in which the verdict is that the CFC rules can only be applied in the EC perimeter when there is artificial structuring.

Evidently this case has to be read in accordance to the Halifax incident (Halifax plc, Leeds Permanent Development Services Ltd., County Wide Property Investments Ltd. Vs. Commissioners of Customs & Excise, Case C-255/02, ruled on February, 21, 2006), in which anti-avoidance rules are presupposed in all tax rules as a general principle.

Obviously, the Halifax Case was the first point in order to allow the application of the anti-avoidance rules, and the Cadbury Schweppes was the logical development of that change from a general scope decision to a specific case of appliance of anti-avoidance rules perpetrated by states.

Moving further, another problem with the CFC rules is that there is an asymmetry because overseas profits are deemed as taxable (and consolidated), however generally losses cannot be paired with internal profits, since the most common consolidation approach is the basket one in which overseas losses and profits are set against each other[9].

A solution to this problem was properly addressed in the Mark & Spencer Case (Marks & Spencer plc vs. Halsey (Case C-446/03), ruled on December, 13, 2005), in which the overseas losses can be consolidate when there is no other possibility of deducting in the country they were produced.[10]

In conclusion, the CFC rules are a form that presupposes the consolidation in a form of anti-avoidance provisions, but the immediate attraction of the taxable matter due to the universality principle also plays and important role on the creation of these rules.

8 There are some countries that still make reservations against this incompatibility, especially Belgium and, in a lesser extent, Ireland, Luxembourg, Netherlands and Portugal.

9 Normally, this veto to use losses from another jurisdiction in the consolidation happens because of the fear of double dipping them, as they should be used to annul future profits in the other country.

10 As an example of a book that discusses this EC ruling for the consolidation of regimes, read: WEBER, D. & DA SILVA, B. A. *From Marks & Spencer to X Holding:* The Future of Cross-Border Group Taxation. Amsterdam: Kluwer Law International, 2011.

2.1 An overview of the SA, HST and CCTB[11]

The anti-avoidance rules as set forth in the CFC legislation depart from a worldwide based tax system and use the separated account on its behalf, as all the income is re-qualified under the rules of the consolidating country.

This separation account approach is a unilateral measure of allocating profits and is based only on the national set of rules (GAAP and tax accounting principles).

This is when the treaties to avoid double/multiple economical or juridical taxation come in place and give exemption or tax credit in order to prevent this harmful phenomenon, which often happens under the universality principle attached to the CFC legislation/consolidation.

In order to create an alternative mechanism to the CFC consolidation and the duality of qualification by the residence or the source country, as well as to proper allocate the tax accordingly to each country's participation on the profits generated by its productive capital, Europe, in its counsel, is roughly developing two alternatives in order to generate more rationality to taxation under, at least, the EC.

The two most important approaches are the so-called Home State Taxation (HST) and Common Consolidated Tax Base (CCTB), the last one created alongside its respective formula of apportionment.

The so-called HST uses the residence of the parent corporation in order to qualify the income on another tax jurisdiction.

Obviously, this system has a great deal of difficulties because every country has to acknowledge each tax rule of all nations in order to apply the taxation on that specific country.

That is why this work focuses most on the second one, the CCTB, which is a taxation system that consolidates all incomes of parent and subsidiary countries and, in the end, the taxes levied are distributed among the jurisdictions where the company has business by using a Formulary Apportionment.

Of course the tax rules, as in the HST, have to be well-aligned, and a common definition of income and qualification has to be made.

11 A book that deals with many facets of all the consolidation systems is: LANG, M.; PISTONE, P.; SCHUCH, J. & STARINGER, C. (Orgs.) *Common Consolidated Corporate Tax Base*. Seiten: Linde Verlag, 2008.

It can be said that this FA[12] and [13] can use as a departing point the experience of the alternative (secondary) methods referred in the guidelines for transfer pricing edited by OECD, because those methods exactly deal with the apportionment of profits under operations.

There is an interesting paradox within the CCTB, which is the fact that it is going against the trend of the passage from territoriality to worldwide taxation.

In this case, with the Formulary Apportionment, there is no form of worldwide taxation, even though the distortions/erosion of the taxable basis caused by the artificial arrangements could not be that well recognizable under these rules.

In other words, the lack of concern with tax avoidance and artificial arrangements is that those arrangements would be declared null with a proper FA.

3 Some problems in global tax convergence regarding consolidation

Taking as a focal point the definition and scope of the CCTB, some concerns arise from an economical and juridical point of view.

In the economical point of view, as mentioned, the Formulary Apportionment is the main concern.

From the juridical point of view, the concerns are mainly focused on the cession of tax sovereignty (and the problems arising from harmonization) and the qualification of incomes.

Apart from the problems on setting a perimeter of consolidation related to the countries outside this perimeter[14], there are some other problems regarding this issue.

Actually, looking from just a tax point of view is a partial assumption and recognition of the problems of this consolidation.

The shift in the observed operation of the tax system has to take into account the corporate and concurrency law.

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12 The form and structure of the FA draft under the Commission was very well discussed in an economic point of view by Professors Marcel Gerard and Edoardo Traversa, both from Louvain-La-Neuve University In: GERARD, M. & TRAVERSA, E. "Supplementing consolidation and apportionment with anti-abuse provisions". In: *Tax Treaties:* Building Bridges between Law and Economics. Amsterdam: IBFD, 2010.

13 For a comprehensive work on the subject: WENINGER, Patrick. *Formulary Apportionment in the EU*. Cambridge: Intersentia, 2009.

14 In this matter, the analysis made by Prof. Edoardo Traversa in the article written in co-authorship with Prof. Marcel Gerard (In: GERARD, M. & TRAVERSA, E. "Supplementing consolidation and apportionment with anti-abuse provisions". In: *Tax Treaties:* Building Bridges between Law and Economics. Amsterdam: IBFD, 2010) deals exactly with this, which is outside the scope of this article.

In other words, fiscal and financial incentives/aids arising from the states (deemed licit or illicit under WTO or EC) have to be present into this discussion because, if not, states are relinquishing part of its strategies to attract companies in order to have a future economic development.

If this is not taken into account, the *status quo* of the current order of development between CE countries would not be changed, creating a paradox, because economically, for the enterprises, this can create a better environment, however, for the development of the states' economic and strategic public policies planning, it would be inefficient, since those states would have less means in order to implement those policies.

Particularly, this proposal has to give room for countries to create and implement public policies in attracting companies and developing some specific economic sectors, which seems to be one of the motives behind the current (underwhelming) state of the EC Directive on the subject.[15 and 16]

From a corporate point of view, the correct allocation of profits in order to face costs, as well as the allocation of risks and profits are real problems, considering that the cost splitting mechanisms such as administrative costs and publicity costs are a strategic tool to generate profits.

The same is applied to the proper allocation and recognition of royalties and intellectual property, which are difficult to understand.

In another scope, there are also the problems of public transparency and, specifically, the exchange in information, as well as the overseeing fact in tax administration carried out overseas.

These problems were extensively addressed in the OECD context, as the Treaty Model has articles dealing with: exchange of information and tax arbitration (article 24); secondary adjustments regarding transfer pricing (article 9.2); and the assistance in levying taxes (article 28).

The problem, in general, is the respect for other countries' administrative practices and specific tax and corporate rules.

As an example of such rules, there are the mandatory dividends distribution and the mandatory contingencies.

15 Other arguments are raised in: DE WILDE, M. F. "Tax Competition within the European Union – Is the CCCTB-Directive a Solution?" (June 11, 2013). Available at SSRN: <http://ssrn.com/abstract=2278204 or http://dx.doi.org/10.2139/ssrn.2278204>.

16 LOYENS-LOEFF. "European Parliament issues Report on the proposal for a CCCTB". (Acesso em: 10.dez.13) In: <http://www.loyensloeff.com/nl-NL/Practice/Documents/CCCTB/Update_EP_report.pdf>.

It is interesting that the background for these assumptions lies on the fact that from a corporate point of view one thing is to operate directly, as a branch of PE, and another is to be a company that has a related enterprise overseas.

This inference is based on the fact that self-preservation and mandatory respect to other countries rules are an obligation in conducting business with a subsidiary company[17].

4 Brazil as an example: blind spots

Brazil is on the trend of the global legislation regarding the worldwide taxation approach and also related to the rules regarding CFC legislation and its anti-avoidance counterparts, like transfer pricing rules and rules specifically designed to contrast the Tax Havens.

The worldwide taxation in Brazil has begun just on the middle 90's through article 25 of the federal law number 9,249 of 1995, which was applicable just in the 1996 tax period.

Following this rule, the transfer pricing rules were created alongside the improvement of the anti-tax haven rules (federal law no. 9,430 of 1996).

Then, in 2001, via the article 74 of MP no. 2.158-35 (which has legal binding power such as a federal law) the so-called anti-CFC legislation was enacted alongside the modification of article 43 of the CTN (Brazilian National Tax Code).

This so-called CFC rule was based on the fictive dividend approach and was partially upheld in the Supreme Federal Court in the ADI 2,588 procedure of 2001, even if there was some points that should be discussed further.[18]

Referring, in the end of December 2010, alongside the aforementioned CFC and transfer pricing rules, the MP 472 (converted in a Federal Law, no. 12, 249/2011) brought some addition to the Brazilian international anti-avoidance tax rules.

The main addition was: the establishment of thin cap rules (article 24 of Law no. 12,249) with specific criteria on the debt/equity ratio; non deductibility of costs in operations with Tax Havens (articles 25 e 26 of the same Law, no. 12,249).

Furthermore, the problems regarding the consolidation of overseas profits in Brazil contain many inconveniences, highlighting that the Brazilian tax

17 This thinking can be indirectly found in the Philip Morris Case (Ministry of Finance [Tax Office] vs. Philip Morris (GmbH), Corte de Cassazione no. 7,682/05 of December, 20th, 2001, ruled on May, 25, 2002).
18 The consolidation of this rule can be seen on the following document: "Solução Interna de Consulta 18-COSIT", from the Brazilian tax administration.

administration does not regard CFC rules as opposite to domestic or international laws.

Even more, Brazil does not allow the compensation of overseas profits and losses in regard of the consolidation under the CFC rules.

The main issue on the consolidation of Brazilian rules, however, happens in the determination of foreign profits, because there is no specific rule regarding the transformation of overseas incomes according to Brazilian rules, by the usage of the poor equity method to adequate the incomes to the parent company.

This does not take into account the need to have a symmetry of accounting rules that are applicable to both companies (parent and subsidiary), such as the IFRS standards and corporate rules.

In this matter, as stated before, there is the need to respect the rules of all countries involved in order to determine the actual transferred profits and the specific tax credit (or exemption) which have to be properly calculated.

Evidently, this is the major blind spot in Brazilian CFC rules and in almost all consolidation rules, considering the qualification of the incomes, as well as the quantification of risks, liabilities and depreciation (e.g.) are different in almost all legal/accounting systems practices.

It is important to remember that Brazil has just incorporated the IFRS into its corporate law (by the federal law no. 11,638 of 2007), but it is not clear that Brazil has incorporated those principles in the tax law[19].

The current Brazilian tax GAAPs (General Accepted Accounting Principles) are not well developed in the appropriation and conversion of foreign incomes and in the evaluation of future liabilities and risks. There are no specific criteria for that.

Therefore, about this matter, the implementation of IFRS principles can be a window of opportunity for a better development of consolidation rules.

Finally, as examples of Brazilian rules that can provoke problems in the consolidation happening in other countries, are: the limitation contained on Brazilian laws, seeing that 30% of the profits to be deduced with previous losses within a specific income tax regime and the incorporation of enterprises, in Brazilian law, of losses are not deductible for the incorporating company for tax purposes.

19 Even though it is this author's position that the IFRS principles do not need an specific rule in the tax code, the majority of the doctrine stand behind the legality of the article 15 of the federal law no. 11,941, that states that the tax neutrality of the IFRS principles until another federal law declares otherwise.

5 Alternative measures and solutions for consolidating taxable basis globally

Through the clear comprehension that the consolidation problems can happen within the CFC rules and in the context of worldwide taxation of incomes, there are some measures that can be deemed to overcome the problems raised in this article.

Firstly, the corporate governance rules can be viewed as a tool to a more stable corporate environment and practices, promoting an easily consolidated tax base.

The same applies to the accounting principles, that can turn into a global tool for establishing a set of apparatuses that will allow companies to produce tax documents from one company to another with no doubts on the criteria of appropriation of costs or incomes.

The anti-avoidance rules that set limits to artificial structures are another tool that has to be taken into consideration when analyzing the business' structure, as in the criteria of substance over form.

Plus, the limits on state aid or tax reliefs contrary to EC or WTO rules have to be taken into consideration when consolidating from both set of rules and applications (administrative practices) points of view.

There has to be a differentiation between conducting business directly and by a branch or PE, as the set of legal rules might change, such as minimum contingency reserves to protect the company, mandatory reinvestment, among others.

Furthermore, as an objective limit, each country has to be aware of the set of rules (tax, corporative, labor, and environmental) of the subsidiary business country, and must respect them upon consolidation.

As a partial conclusion, awareness and respect to the other country's legislation regarding qualification of costs, incomes and stakeholders' rights (as an example), intertwined with an efficient exchange of information between countries (and different agents into a country or between countries such as SEC and IRS) are the keys to a more stable legal and compliance (tax and corporate wise) environment for the companies in the global economy.

Finally, the financial need to prevent a new global crisis using, as example, a forced form of harmonization of practices and criteria that will be applicable to the financial institutions (such as the Basel Index) can be disseminated in the taxation world through the advent of the Tobin tax.

Conclusions

1) As the globalization advances, the consolidation of the financial reports is a necessity in order to determine the size of the multinational enterprises;

2) The artificial shifting (or deferral) of the taxable basis is contrasted by the international anti-avoidance tax rules, such as the CFC legislation rules;

3) Universality is the current trend in taxation and deems consolidation as a need that combines anti-avoidance and higher level taxation;

4) The current status of fiscal concurrency works disfavorably for multinational enterprises since the compliance costs and the taxation level rises within the consolidation rules and the principle of universality;

5) The CCTB prevents abuses by the countries in the context of worldwide taxation and provides a better compliance and taxation environment for companies;

6) There are some blind spots in the CCTB approach, as it diminishes the margin for tax competition as a form to develop countries;

7) The same happens when the CCTB is seen by different points of view, turning the harmonization into a very spread and needed concept, considering that it creates effects in tax, corporative, concurrent and labor law, as examples;

8) Brazil does not have a standard CFC legislation and has an underdeveloped set of rules for consolidation (from both fiscal and accounting standpoints);

9) There are some alternative measures to consolidate the tax base using corporate governance and accounting tools, as well as respecting other legislative licit economic incentives and enforcing anti-avoidance rules properly.

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