

CORPORATE SOCIAL RESPONSIBILITY VERSUS TAX AVOIDANCE PRACTICES

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Worldwide crisis has made multinational companies that are engaged in corporate social responsibility actions to manage their businesses through the lens of various tax avoidance practices. The content of this paper is important due to the fact that tries to identify the impact in case of companies active in corporate social responsibility actions versus their tax structures orientation.

Corporate social responsibility literature did not paid enough attention on the impact of the tax avoidance practices of companies. Tax, as a concept, brings in itself an important corporate financial impact with subsequent effects for the life of multiple citizens in countries where private entities are operating.

Even though companies are usually expressing their ethical and responsible conduct in respect of the social environment, there are many cases when the business practices were not aligned with the declared corporate behaviour. This paper seeks firstly to examine whether companies engaged in tax avoidance practices (ex. offshore tax havens) consider that continue to act socially responsible. Secondly, the paper examines the influence on attending the stakeholders' goals for those companies practicing tax avoidance and its implications on corporate social responsibility actions. Moreover, the paper focuses also on the aspects described before from the perspective of the corporate entities operating in Romania.

This paper's intention is to use and to develop the results of previous research carried out by Lutz Preus (University of London) and, subsequently, by Senators Levin, Coleman and Obama in their "Stop Tax Haven Abuse Bill".

The implications and the objectives of this material are to highlight, to identify and to spot clearly the relations and the influences of the tax haven practices of corporations versus their undertaken social responsibility actions. Moreover, this paper brings a fresh perspective of this topic from the Romanian market.

I consider that this paper triggers in itself a good presence in nowadays business environment, due to the fact that stakeholders are becoming more and more aware on both corporate actions versus their tax efficient structures. Many of the aspects described were already "tasted" in practice by various stakeholders, while many multinational corporations started to become realistic about the risk of being "socially responsible" through tax schemes.

Keywords Corporate social responsibility, Tax haven, Tax avoidance, corporate financial implications, Investments

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1. Introduction

One of the most important elements when referring to corporate social responsibility (CSR) is the notion of legitimacy of the actions. It is all related to the fact that a potential failure in disposing valuable services of private entities to the stakeholders may trigger the permission of private entities to exist. In this respect, companies involved in CSR actions should pay more attention on all their business activities. One aspect of their corporate activity relies on taxes that should be paid based on domestic or multi-national legislations. As a part of the taxes structure, the concept of tax avoidance may be seen as a controversial business factor in relation with CSR policy of each company.

The paper brings up the evidence of how companies involved in tax avoidance practices still consider being socially responsible.

Moreover, the relation between tax avoidance practices, CSR image and actions is in the scope of this paper. It is relevant to understand if both, the stakeholders' and shareholders' objectives were influenced by the decision of corporations to be based offshore and to apply various tax avoidance structures.

Even though in Romania the concept of CSR is still an on-going process, some previous steps have been undertaken in this respect. Thus, there may be followed some particular cases in order to assess whether the tax avoidance practices have influenced in different manners both the stakeholders and shareholders of the entities.

2. CSR and tax avoidance practices

Tax avoidance practices (TAP) are, in most of the cases, the business structures pursued by companies in order to obtain a more convenient tax position. In practice, TAP is related to the fact that corporations are moving their headquarters in more tax convenient locations, especially offshore (in places so called tax havens).

Tax havens typically offer secrecy to protect investors against scrutiny by outside authorities, thus preventing the effective exchange of information on tax payers. Furthermore, many tax havens do not require substantial corporate activities within their borders for a company to benefit from the preferential tax treatment. In many cases, this may actually apply only to corporate activities that are undertaken beyond their borders.

2.1. Companies involved in TAP (offshore in tax havens) - are still CSR aware?

In order to assess whether companies involved in TAP consider that are continuing their CSR policies without any effect on their corporate behaviour, Lutz Preus, from University of London, considered in the paper "Tax avoidance and corporate social responsibility: you can't do both, or can you?" a research study in this respect. The research was pursued by using the Stop Tax Haven Abuse Bill tabled by Senators Levin, Coleman and Obama in 2007, as a starting point for identifying tax havens from US. Moreover, the list with tax havens was compared by the factors from the OECD model. As a result, a final list with tax havens was identified. Then, by using the Forbes Global 2000 list of 2008 companies, a list containing 24 companies for Bermuda, four for the Cayman Island, two for Panama and one for the Channel Islands was identified. Thus, the paper analyzed a combined list of 27 companies from Bermuda and the Cayman Islands.

The smallest of these – Bermuda insurance company Allied World Assurance – still had an annual turnover of US\$ 1.45 billion in 2008. The study analyzed codes of conduct as displayed on the web sites of the 27 companies, which were checked during autumn 2008 for a presence of a code of conduct. For the purposes of comparison, a sample of US companies was also checked for codes of conduct.

The result of the study into the position on corporate social responsibility by companies that are based in tax havens found that such companies indeed make claims that they engage in socially responsible business practices. It was also surprising to find that 38 per cent of the sample firms operating offshore claimed to obey both the legislation in the offshore and domestic locations. Also, the study identified that companies have made significant efforts to design codes of conduct and mentioned the commitments of the TAP companies to provide shareholders with a satisfactory return for their investment and commitments to employees to avoid harassment, to promote diversity and to safeguard health and safety at work.

In respect to organizational legitimacy, the findings of the study point to a complex picture where companies based offshore engage in acts of strategic legitimacy to be seen as socially responsible (communicating CSR commitments through codes of conduct).

As a result of the study, the most important companies (part of the study) operating offshore consider that are continuously looking at their CSR status and in order to act responsible, even though the TAP are being used in their business frame.

2.2. CSR hypocrisy – reports and facts

As a follow-up related to the study presented above, Prem Sikka, from University of Essex, United Kingdom, observed the hypocrisy of companies in respect of CSR. Why hypocrisy? Very simple because, generally, companies are labelling all their activities (including tax positions) as very responsible, transparent to all stakeholders and with good financial results for the shareholders.

Related on taxes, in the real conditions, few companies make any direct reference to payment of taxes in their social responsibility reports, but their claims of ethics, integrity, honesty, transparency and responsibility are meant to apply to all aspect of their operations. Since the payment of democratically agreed taxes in an important part of corporate citizenship, this assumed that the declared standards also applied to taxes. The researches conducted in this field presented that there is a considerable difference between corporate discussion, corporate decisions and action. All these aspects are conferring a so-called corporate hypocrisy. In this respect, it can be considered that in the real business environment corporations have developed two cultures:

to promise ethical conduct to external audiences and
to improve profits by avoiding and even evading taxes.

Developed companies elaborate practices to appropriate returns due to society on its investment of social capital. In order to do that, companies are nowadays using various methods, such as: transfer pricing, royalties, offshore tax havens and planning structures just to avoid taxes. Behind of the very popular CSR reports, interviews and other PR materials, there is a general problem related to the fact that corporations did not communicate their TAP to stakeholders and did not explain the possible social consequences of avoiding taxes.

In a formal manner, real and used TAP are considered to have a legal character. By aligning together CSR policies and TAP, it is true that there is no legal or moral link between them. Managers are pursuing tax avoidance for reaching higher profits, remuneration, status and media accolades. The contradictions between reports and facts have been exposed by so-called whistleblowers, other investigators and law enforcement agencies. The implosion of this hypocrisy has resulted in fines, imprisonment for some company executives and hostile press coverage. The negative outcomes may have persuaded some to take steps to align corporate culture with publicly espoused claims, but the systemic pressures to maximize profits, share prices and executive financial rewards present considerable barriers to securing long-term cultural change.

The exposure of organized hypocrisy challenges corporate claims of social responsibility. There is a need to go beyond the carefully cultivated corporate image and engage with actual corporate practices and consider their impact on the lives of people. In many cases, this tax avoidance evidence has real human consequences even though corporate CSR reports remain silent. Tax revenues provide the most durable resource for any country, in order to finance social infrastructure and to provide much needed economic and social development to improve the quality of life of millions of people.

Moreover, the consequences of organized tax avoidance affect developed countries too and limit the support that the state can provide to the less well-off, the elderly and the vulnerable. In this respect, it should be mentioned the fact that the UK state manages poverty through the provision of a variety of tax credits and social security.

The UK state pension is a major source of income for retired citizens, but it is almost the lowest in Europe. Each state can provide support if it in position to collect sufficient tax revenues and

corporations live up to their promises of responsible and ethical conduct. The possibilities of social responsibility rest on the alignment of corporate culture with the social expectations that companies will put in practice their espoused goals. In principle, the state could be mobilized to exert pressure on companies by requiring greater disclosures about corporate strategies for avoiding taxes and changing the nature of corporations

so that diverse social groups are represented on company boards. This element may be considered as a source of tendency to avoid taxes, nor make the tax avoidance industry go away. In any case, the states compete to attract capital and in that process offer tax holidays, inducements and concession to encourage mobility of capital, which in turn fuels schemes for avoiding taxes.

It is a beginning of a long and complicated process that should begin from stakeholders - the most affected part of these TAP. It seems that there are few signs that stakeholders are to take some measures, in a way that to become more aware about the well labeled reports of companies and the real fact behind these reports. Even though from a legal perspective and in many cases there is nothing to do in respect of tax avoidance, there should be addressed more attention on how these tax avoidance practices may be in a way or other reflected.

An interesting idea would be that companies to publish in their CSR report a special form related entirely to tax avoidance practices linked with CSR principles. In this way, an initial image of this process can be obtained and it may be seen as a starting point in order to develop more complex methods. Also, international organizations should consider these tax practices related to CSR policies and should develop them in further recommendations.

Another form of gaining advantage in front of this issue may result in developing a rating for each company operating CSR projects. It may be granted an inferior evaluation score for companies established offshore or TAP companies.

There is a lot of work to do in order to start presenting the disadvantages and incompatibility of TAP with CSR policies and projects.

2.3. Status of the CSR and TAP in Romania

Romania holds an important place, if not absolute record, in respect of the number of duties and taxes, fiscal and non-fiscal. There are almost 500 taxes, as well as the number of hours a taxpayer – economic agent – must spend paying them: 200. This severe taxing situation made the English Consul in the Romanian Principalities, sir Wilkinson, to write almost 200 years ago that: *"there is no person in this world more oppressed by despotism and overwhelmed by duties as the Romanian peasant in Walachia and Moldavia and no one could suffer with the same patience and resignation as he does, even half of the duties burdening him"*.

As a result, many of the foreign experts considered that Romania was not in a position to study and follow a successful tax model, the one of Portugal for example, or to simplify the tax system and reduce the number of duties and taxes due to the tax system, so as to reduce bureaucracy, the costs for tax collection and the time lost with its payment. Also, it was considered that Romania was incapable to offer to the population and to the economic agents a tax system that observes the elementary rules of taxation.

In light of the aspects mentioned, there is no doubt that a lot of companies (in all categories) have started to seriously think about moving their business premises abroad or to find out methods for reducing the tax burden. This was the moment when TAP started to develop in Romania.

Thus, Romanian companies or local subsidiaries of multinational companies had the reasons to look towards the "fiscal paradises" and to register businesses there. And, for them, there was no reason, argument or interdiction that can stop them from the desire to do business in a fiscal paradise, except the lack of courage to intelligently exploit the opportunity that such a business movement offers or the narrow-minded visions of those incapable to understand that the model to be followed is the one that works well and not the one that makes you run from it. And the one

that works with results that attract any investors can only be stopped by taking risks that the states have no interest to assume.

The American writer - Walter H. Diamond (1914-2008), expert in commerce, taxes and economy, author of 81 specialty books did not express his conviction that the offshore investments shall develop fast in the future, but concluded that *“actually, I believe that the 21st century will be known as the century of offshore offices”*.

In the moment when businesses operated in Romania understood the model of TAP and considered that operating business in a “fiscal paradises” represents a great opportunity that cannot be ignored and that the “escape” to the offshore does not imply a fraudulent tax evasion, there were and continue to be a lot of companies that are using the tax planning structures in order to avoid taxes in Romania. Also, by taking into account that CSR is in the development process in Romania and there is no more professional environment developed, the stakeholders in Romania have a minimum “voice” to record their complaints.

In this respect, important companies from Romania that have a clear CSR policy have decided to apply TAP structures, in order to avoid some of the domestic taxes. As a consequence, we can consider that CSR hypocrisy was already accomplished. In the company reports (or special CSR reports, for some companies) there were no mentions related to the fact that operating abroad may result in less taxes to be paid in the domestic countries.

Moreover, the companies considered to act in a transparent, social and trustful manner for the social environment. It is also important that CSR is not a well-known concept in Romania and, based on this, no organized body or NGO may claim this offshore concept of companies in relation with CSR.

As a result, the Romanian corporations may have the possibility to continue their TAP until the social environment from Romania or legal entities from Romania may react and may consider that reports and facts of entities are somehow different from the reality. For a non-professional stakeholder environment from Romania, it is an honor that companies started to invest a part of their profits for the society and, furthermore, links between CSR and TAP were not bring up until now.

3. Conclusions

CSR and TAP are nowadays in the common sense of the worldwide corporate actions of the companies. Even though a company socially responsible is very useful for the social environment, its way of reducing tax burden may impact the average image of the social behaviour. Taxes are an important corporate financial contribution with subsequent effect for the life of multiple citizens in countries where private entities operate. By taxes, a lot of social payments are possible to be made for citizens. Even though companies are usually expressing their ethical and responsible conduct in respect of the social environment, there are many cases when the business practices were not aligned with the declared corporate behaviour – as TAP were put in-force.

This paper sought firstly to examine whether companies engaged in tax avoidance practices (offshore tax havens) consider that are continuing to act socially responsible. In this respect, a study carried out recently pointed out that even though there are clear evidences that companies are somehow hiding their profits into TAP, these companies consider to have a well-known CSR approach and not to mention anything about their profits movements.

Secondly, the paper examined the influence on attending the stakeholders’ goals for those companies practicing tax avoidance and its implications on corporate social responsibility actions. Another study carried out recently presented practically the hypocrisy situation by which many of the companies are engaged to. There are various talks and attitudes of the companies engaged in CSR project but their actions have the result of moving capital outside the domestic countries. The amounts of taxes that are in this way not paid to the local budget have an impact

related to social assistance each country needs to manage. In these situations, stakeholders started to be present and to initiate different dialogues. It is a long on-going process that may produce some results in the near future.

Moreover, the paper focused also on the aspects described before from the perspective of the corporate entities operating in Romania. In Romania, CSR has a more initial approach and companies started to align their policy based on this criteria. It was easier for multinational corporations that, based on globalization, have developed easier steps to rely on CSR policies into each domestic country activity. Romania is known also as a tax burden country. As a result, a lot of companies moved their capital by using TAP and without any kind of reconsideration for social environment. These types of companies are continuing to publish into their annual report the part of the CSR, without mentioning anything about the TAP. In the course of these actions, an important aspect is related to the stakeholders' power – in Romania stakeholders have no previous experience and, as result, it may last a period until something is going to change in this respect. As a result, it is very probable that companies from Romania that operate through TAP to have enough time to re-consider their activities from a social point of view.

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