Chapter 20

Croatia: Global and European Influence on Procedural Tax Provisions

Nataša Žunić Kovačević

Abstract

After short introduction on the impact of European and global recent changes on the development of Croatian tax law it is given a survey on the issue of the concept of tax sovereignty in Croatia. Special part of the paper is the section that confirms influence and the importance of the tax harmonization at the EU level for national legislative amendments and reforms. The obvious field of such influence is revised in section on anti-tax avoidance framework with examined national tax policy in the area of tackling tax avoidance and fraud. Special focus is given on the implementation and evaluation of Union measures in the field of anti-tax-avoidance in Croatia, since the EU policing tax avoidance has special dimension for MS. Information exchange and mandatory disclosure rules as tools for fighting tax avoidance and fraud are fields that are shown as example of the influence of tax policy approach addressing the issues of tax transparency and fighting tax evasion. Peculiarities in the domestic legislation as rules that apply in addition to EU law are in a brief analysed in paper, such as the introduced piercing the corporate veil for tax purposes. It was an instrument for preventing tax avoidance. It is concluded that Croatian tax legislation landscape would undeniably benefit from further improvements, especially regarding tax procedure, and improvements from the European and international level. Croatian tax system in the last decades have been linked with the inputs and advice of foreign experts so it is underlined that Croatian, as any tax system, should be adapted to country's socio-economic specificities.

Nataša Žunić Kovačević (2024) 'Croatia: Global and European Influence on Procedural Tax Provisions'. In: Zoltán Nagy (ed.) *Economic Governance. The Impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries,* pp. 457–475. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.znecogov_20

Keywords: *tax sovereignty, tax harmonization, European and global impact, Croatian tax law, national legislative amendments and reforms*

1. Introduction

European tax law, which reflects the fundamental legal principles of European law, directly influences Croatian tax law, as exemplified by the implementation of the anti-avoidance rule on which this chapter focuses. The fight against tax evasion and abuse at the global and European Union (EU) levels has been particularly remarkable in the last decade – this is evident, for example, in intense legislative efforts to prevent tax evasion and the simultaneous development of legal transparency. Notably, such efforts have influenced the development of an increasingly complex framework for information exchange and administrative cooperation. This chapter discusses the impact of these developments on Croatian tax law with reference to taxpayers' rights (especially in terms of resolving tax disputes) to explore relevant issues in European law and its practical impact on national tax law.

2. The concept of tax sovereignty in Croatia

During the transitional era of the 1990s, Croatia created a new tax system suitable for a market-oriented economy, initiating an intensive legislative shift. This is where the development of the material and procedural tax frameworks differs. The dynamics of changes in the procedural legal framework of taxation are not particularly intensive; however, they are accelerating in a positive direction under the influence of European legislation. A more dynamic substantive tax law is the result of the social and economic environment in Croatia and is not due to the greater influence of EU legislation.

The Croatian tax system is the most important source of national public revenue. It is[1] regulated at the central level, as taxes are introduced only by the state parliament. Even when local units are entitled to regulate tax rates, this is done within the set framework, as all elements are set out in the tax acts. The Croatian Constitution[2] includes a universal obligation to pay taxes in accordance with individual

1 Accounting to 55.6% of budget revenues in 2020.

2 The Constitution of the Republic of Croatia, Consolidated text, Official Gazette ('Narodne novine') No. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014 (hereinafter: the Constitution).

economic capacity, thereby mandating the ability to pay principle in the Croatian tax system. The Constitution also sets out the principles of equality and equity as the fundamental principles of the tax system. The normative framework of taxation includes the systemic legal source – that is, the law on tax procedure; namely: the General Tax Act (GTA).[3] The importance of legislative instruments in this area should be emphasised, as Croatia has both a civil law legal system that strongly adheres to the constitutional principle of legality and a long tradition of literal interpretations of the law by the courts.[4]

2.1. Development of Croatian tax law

From a tax policy perspective, it is interesting that some of the most controversial changes in tax legislation, including the new framework of anti-tax avoidance rules and rules in the field of information exchange, took place without special discussions with legal practitioners or tax scholars. It should be emphasised that no single theory underlying the anti-avoidance approach in tax legislation could be identified during the amendments of the respective legal framework. At the same time, it should also be noted that, in the context of information exchanges, the theory of the protection of taxpayers' rights has increasingly been emphasised. The abuse of law doctrine, which is deeply rooted in Croatian civil law, was used to justify the GTA amendments of 2012, laying down a special procedure for 'piercing the corporate veil' in tax matters.[5] The amendments caused a stir in the business community because they allowed tax authorities to declare a company's shareholders, board members, and executive directors (as well as individuals connected to them) liable for the company's tax debt, provided that it could be proven that the company's inability to pay its tax debt was caused by an abuse of rights or power.

On the contrary, one distinctive targeted anti-avoidance rule (TAAR) was included in the 2012 Profit Tax Act (PTA) amendments, which introduced a tax benefit for reinvested company profits. Specifically, the corporate income tax base can be reduced by increasing the company's capital for investment and development. From the outset, policy-makers recognised the tax avoidance potential of this benefit and introduced a TAAR, which stipulates that entitlement to reduce corporate income tax will not be granted if it is obvious that the intention of the company's capital increase was tax evasion or tax avoidance. Examination of the taxpayer's purpose as a condition for the application of the anti-avoidance rule is what makes this specific TAAR similar to the general anti-avoidance rules (GAARs) found in other tax systems. The wording of the above-mentioned TAAR is comparable to that of TAARs applicable in the context of the three EU direct tax directives. The provisions of the

3 General Tax Act, Official Gazette No. 115/16, 106/18, 121/19, 32/20, 42/20, 114/22.
4 Gadžo and Klemenčić, 2014, p. 290.
5 See: Žunić, Kovačević and Kovač, 2023, pp. 59–86.

Merger Directive (MD),[6] Parent–Subsidiary Directive (PSD),[7] and Interest-Royalties Directive (IRD)[8] were implemented in Croatian legislation – mostly in the PTA and the accompanying Ordinance on Corporate Income Taxation[9] – during accession to the EU. It appears that the Croatian legislature opted for a uniform anti-avoidance approach in the context of tax directives, even though the wording of the different TAARs is not identical. Consequently, the benefits of the MD, PSD, and IRD are denied if the principal purpose or one of the principal purposes of the pertinent transaction/arrangement is tax evasion or tax avoidance. Ultimately, it can be concluded that the harmonisation of Croatian tax law with EU law requirements brought important changes to the design of anti-avoidance legislation. Specifically, the taxpayer's purpose as a subjective element of the transaction, which was previously not acknowledged in the delimitation of tax avoidance, is now recognised as a constitutive element of tax avoidance, albeit in a limited number of TAARs. The tax community found that the positive influence of EU law on Croatian anti-avoidance law provided an important point of departure for future policy choices in this area.[10] The preceding overview of Croatian anti-avoidance legislation may lead to the conclusion that policy-makers considered a GAAR unnecessary and chose instead to rely on TAARs as key anti-avoidance tools. However, a more detailed analysis of the legislative dynamics in this area reveals that Croatian tax policy-makers have not adopted a coherent anti-avoidance approach. What is particularly worrying is the absence of uniform criteria to delimit tax avoidance. In practice, taxpayer abuse of laws or rights are a defining element of tax avoidance. Examples include cases related to the application of the GTA provisions on scam transactions and cases related to 'piercing the corporate veil', where the purpose of the taxpayer's transaction or arrangement is rendered unimportant.[11] In other cases, such as those related to the application of a TAAR concerned with a tax benefit for reinvested profits or the implementation of the provisions of EU direct tax directives, the taxpayer's purpose is essential. As described in case law, the CJEU considers both objective and subjective

6 Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (Codified version), OJ L 310, 25.11.2009, 34–46.

7 Directive 2011/96/EU of the Council of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast), OJ L 345, 29.12.2011, 8–16.

8 Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003, 49–54.

9 Ordinance on profit tax, Official Gazette No. 95/05, 133/07, 156/08, 146/09, 123/10, 137/11, 61/12, 146/12, 160/1, 12/14, 157/14, 137/15, 115/16, 1/17, 2/18, 1/19, 1/20, 59/20, 138/20, 1/21, 156/22.

10 Gadžo and Klemenčić, 2014, p. 293.

11 Gadzo and Klemencic, 2014, p. 293.

criteria constitutive elements of tax avoidance.[12] Therefore, the reconciliation of differing criteria in delimiting tax avoidance in Croatia is possible if viewed in light of EU legal requirements. Croatian tax authorities and courts are obliged to adhere to the CJEU's notion of tax avoidance when applying national anti-avoidance rules to transactions and arrangements covered by the provisions of EU law. More flexibility is allowed only with regard to national and third countries or non-EU member states.

2.2. Role of stakeholders in the development of Croatian tax policy

In the context described above, there is no debate between stakeholders, including tax authorities, as the Ministry of Finance is the key player in the development of Croatian tax policy. From the perspective of tax legitimacy, the tax administration and the Ministry of Finance play a more dominant role in the creation of tax law than Parliament.[13] This is supported by the fact that most tax bills drafted by the Ministry of Finance have become laws with minimal, if any, revisions during enactment procedures. In this respect, one may question whether certain provisions have been introduced as a consequence of lobbying by various pressure groups or as part of the implementation of European legislation.

The Croatian tax system provides an example of how the introduction of a European rule on the GAAR can enhance legal certainty, although the standard argument is that the GAAR overthrows this important principle. Frequent changes in anti-avoidance legislation, with the introduction of new TAARs, reflect the general problem of the Croatian tax system since its reform in 1994; namely: the unpredictability of the legislative framework.[14]

Accordingly, the main advantage of introducing EU tax law provisions may be legal certainty.[15] Moreover, legal certainty could be enhanced via instruments accompanying the fight against tax evasion at the global and European levels. This struggle also takes place through information exchanges between international and European legislative sources, which are detailed below.

Since the outbreak of the latest economic crisis, tax reforms in Croatia have been driven mostly by the ensuing pressures of fiscal consolidation.[16] Due to a failure to comply with the fiscal targets set out in EU legislation, Croatia entered the excessive deficit procedure (EDP) immediately after its EU accession, meaning that its public finances were monitored by EU institutions.[17] Although the tax community

12 See more: CJEU, 21 February 2006, C-255/02, *Halifax and Others*, ECLI:EU:C:2006:121; CJEU, 12 September 2006, C-196/04, *Cadbury Schweppes and Cadbury Schweppes Overseas*, ECLI:EU:C:2006:544; etc., detailed in: Gadžo and Klemenčić, 2014, p. 286.

13 See: Arbutina et al., 2016, pp. 281–284.

14 Gadžo and Klemenčić, 2014, p. 294.

15 Gadžo and Klemenčić, 2014, p. 294.

16 Perić, Kordić and Mesarić, 2014, p. 115; see also: Čičin-Šain, 2013, pp. 297–301.

17 See: Šimović and Deskar-Škrbić, 2019, pp. 169–186.

still seems to agree that there is no space for a further increase in the overall tax burden, the potential fiscal effects of policies aimed at enhancing tax compliance have been largely overlooked. The experiences of other crisis-stricken EU member states confirm that one of the conditions for EU financial assistance is the development of a strategic approach to fixing the structural deficiencies of national tax systems, including approaches to tax compliance.[18] In this context, the improvement of tax legislation through European initiatives and similar legislative changes by other Member States has given rise to a set of tax guidelines that mostly align with CJEU case law. Notably, the development of a coherent framework for tax law can have significant effects on revenue.

The GTA, a systemic tax law, regulates the relationship between taxpayers and tax authorities by controlling taxation and other public dues (if they are not otherwise regulated by special acts on certain types of taxes and other public charges) and represents the basis of the joint tax system. In addition to this so-called 'systemic regulation', numerous acts regulate specific taxes as *leges speciales*. All tax acts are accompanied by one or more ordinances. As set out in Art. 2, the GTA relates to 'taxes and other public dues', with 'taxes' signifying financial dues and area budget revenue used to settle public expenditure determined in the budget.

3. The harmonization of Croatian tax law

While in some EU Member States there are hot debates over the perceived loss of tax sovereignty,[19] with national legislators having to abide by the ever more complex framework of EU tax law, this discourse is largely absent in Croatia. This was previously explained in the Croatian tax community by the fact that accession to the EU was one of the rare strategic goals agreed upon by an overwhelming majority of domestic political actors since the 2000s.[20] Accordingly, the harmonisation of the domestic legal system with EU tax law was traditionally perceived as a purely technocratic goal necessary to meet the accession criteria. Furthermore, a general lack of awareness of the implications that primary and secondary EU laws may have on Member States' tax systems probably also played a role. Finally, it has to be noted that Croatia never used its tax system to become a financial centre or the 'tax haven of the Balkans', making conflicts with EU law relatively unlikely from the start. In the Croatian tax community, there is an awareness of European tax law as a facilitator of important and inevitable movement in the global direction founded in BEPS and post-BEPS legislative activities.

18 See: Kassim and Lyons, 2013, pp. 1–21.
19 See: Van Apeldoorn, 2016, pp. 215–230.
20 Gadžo, 2019, pp. 116–146.

Amendments to the Croatian tax legislature have mostly been initiated by proposed novelties at the EU and global levels; these include amendments to the GTA as well as to substantial laws, such as those related to corporate income tax.[21] These amendments also recognise that some proposals from the EDP regarding property taxation, such as those proposed by the World Bank, have not been accepted or implemented.[22] The jurisprudence of the CJEU on tax matters has caused even less debate – at least outside academic circles.[23] Notably, some critical observations of the Croatian courts do not refer to preliminary rulings before the CJEU.[24]

Broadly, the national tax community does not recognise Croatian tax sovereignty as something to protect from non-Croatian or supranational influence. It is generally accepted that Croatian legislators at least 'tacitly approved the direction of EU tax policy, diligently transposing the rules of tax directives in domestic law'.[25] The plea for greater fiscal and taxation autonomy does not play a part, even within the sporadically heard Eurosceptic narrative.[26] This may be linked to the expenditure side of the European budget, as Croatia is becoming aware of its position as a growing receiver of EU funds.

3.1. Croatia's anti-tax avoidance framework

3.1.1. Croatian tax policy for tax avoidance and fraud

The Croatian anti-avoidance legislative framework has changed due to strong European and global effects. Several GTA and PTA amendments drafted based on EU Directives introduced a new general and targeted anti-avoidance rule. A notable example is the amendment of the PTA in 2016 with the transposition of the Parent-Subsidiary Directive. This amendment prescribes that taxpayers should not be granted any benefits envisaged in corporate tax legislation if they make use of an arrangement or a series of arrangements classified as non-genuine. The article defines 'non-genuine arrangements' as any business transaction, scheme, action, operation, understanding, promise, or event, comprising one or more steps or parts, which has been put into place to obtain a tax advantage in light of all relevant facts and circumstances. In addition, such arrangements may be considered non-genuine only to the extent that they are not implemented for valid commercial reasons that reflect the economic reality – that is, if they are implemented for the purposes of tax evasion or fraud. Further directions for the application of such a GAAR are listed in the prescribed GTAs. Assessments of an

21 Profit Tax Act, Official Gazette No. 177/04, 90/05, 57/06, 80/10, 22/12, 146/08, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, 32/20, 138/20, 114/22, 114/23 (hereinafter: PTA).
22 See: Bartlett, 2018, pp. 149–162.
23 Dujmović, 2020, p. 353; Žunić Kovačević and Gadžo, 2018; Čičin-Šain, 2016.
24 See: Duić and Petrašević, 2019, pp. 65–95; Materljan, 2019, p. 211.
25 See: Essers, 2022.
26 Compare also the discussion by Čular and Grbeša, 2020, pp. 39–60.

arrangement's genuineness must establish whether the arrangement, regardless of the taxpayer's subjective intention, defeats the object, spirit, and purpose of the pertinent tax provision.

Accordingly, Croatian tax authorities have started to vigorously assess the economic substance of mergers and acquisitions (M&As), often denying the acquirer different tax benefits, which makes the entire restructuring more costly. In doing so, Croatian tax authorities rely on a myriad of domestic anti-tax-avoidance rules, according to which M&A operations may be characterised as abusive. Accordingly, Croatian anti-tax-avoidance legislation has hindered M&A activities. The application of the anti–abuse rule stems from the implementation of the Merger Directive. In transposing the requirements of the Merger Directive into its national legislation, Croatia opted to exercise the option envisaged in Art. 15 para. (1) point (a) of the directive and adopted an explicit anti-tax-abuse provision on the domestic legal plane. Accordingly, tax benefits are denied if it is evident that the principal objective or one of the principal objectives of the transaction at hand is tax evasion or avoidance. Given that taxpayers may engage in abusive behaviour in many different circumstances (i.e., a lack of a valid business or commercial motive amounts to only one example of tax avoidance) revenue bodies presume tax avoidance, as explicitly provided in the Merger Directive itself. The manner in which tax authorities apply these provisions in practice is even more important for M&A participants. It is standard to fully shift the burden of proof to the taxpayer; thus, it is up to the taxpayer to prove that tax avoidance or tax evasion is not the primary goal of the reorganisation. Administrative practice shows that Croatian tax authorities start with the presumption that the intended transaction involves tax avoidance as one of its main purposes even if no evidentiary substratum supports this position. In the second step, the onus is on the taxpayer to rebut this presumption by presenting evidence that the reorganisation is being completed for a valid commercial purpose.[27]

3.1.2. Global and European influences on combating tax avoidance

Tax avoidance currently ranks high in global tax policy, as evidenced by the base erosion and profit shifting plan (BEPS)[28] and other developments at the regional and international levels. EU institutions have also taken an active role and initiative in this area, stressing the need for a uniform anti-avoidance approach across all Member States. The EU has responded to the BEPS with directives against tax avoidance practices that directly affect the functioning of the internal market

27 Žunić Kovačević and Gadžo, 2018.

28 The base erosion and profit shifting (BEPS) initiative of the Organisation for Economic Co-operation and Development (OECD) and G20 countries marked an important development in the reform of the international taxation regime. The plan, which was adopted in 2015, was designed to close tax avoidance loopholes in the patchwork of domestic fiscal laws and bilateral tax treaties and to correct the impact of unfair tax competition.

(ATAD),[29] with the aim of ensuring fair and effective taxation and collection of tax revenue based on new international rules. This confirms the importance of implementing BEPS measures at the Member-State level to achieve fair, efficient, and coordinated taxation at the EU level.

This European response was possible because it involved an instrument that removes obstacles to the functioning of the internal market. Specifically, the ATAD prescribes *de minimis* protection; that is, it does not exclude the application of provisions with a higher degree of protection of domestic or national tax bases of corporate income tax. In other words, it is a minimum harmonisation directive because Member States may apply higher standards than those provided in the directive. In particular, the ATAD introduced four specific rules against tax evasion: three specific anti-tax avoidance rules and one general anti-tax avoidance rule. Member States were obliged to harmonise national legislation with the ATAD by 2018, with some exceptions.[30] Croatia has implemented GAAR and TAARs, mostly by amending corporate taxation legislation and some GTA provisions. As a rule, there has been no debate about these novelties in tax practices.

3.1.3 The implementation and evaluation of European Union measures in Member States' anti-tax-avoidance strategies

The EU's policing of tax avoidance is notable for Member States[31] as the requirements of EU law confirm that there is no genuine EU tax policy.[32] However, the principle of the supremacy of EU law over Member States' national legislation significantly restricts national tax policy and brings additional complexity to anti-avoidance strategies. Ultimately, tax avoidance approaches are unique to each country.[33] The requirements of EU law have a harmonising effect: national anti-avoidance rules must align with EU limitations if a transaction or arrangement is carried out in the EU. In numerous cases, the CJEU decided on the compatibility of national anti-avoidance rules with EU law,[34] resulting in the development of an implicit concept of tax avoidance in the EU. The CJEU's reasoning in 'tax avoidance cases' is derived from the prohibition of the abuse of law as a general principle of EU law.[35] From the tax policy perspective, it is essential to note that the CJEU's approach to tax avoidance cases is remarkably similar

29 Directive (EU) 2016/1164 of 12 July 2016 laid down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, 1–14.
30 Žunić Kovačević, 2020.
31 Prebble, 2017.
32 Gadžo and Klemenčić, 2014, p. 285; Wattel, Marresand and Vermeulen, 2018, p. 478
33 Edgar, 2007, p. 833.
34 Gadžo and Klemenčić are mentioning many cases, starting with e.g., Halifax case and Cadbury Schweppes decision. See also: Gadžo and Klemenčić, 2014, pp. 286–287.
35 Many international authors have explored this subject; see, for example: de la Feria and Vogenauer, 2011; Kuźniacki, 2019.

to those found in statutory GAARs in national contexts, including in Croatian judicial practices.[36] Many administrative instances of case law and substantial tax disputes confirm the positive influence of European legislation. Further, European legislation has also introduced important procedural instruments to prevent tax disputes, such as preliminary rulings and horizontal monitoring. There is also legislation on dispute settlement mechanisms at the EU level, which may be an important instrument for determining general standards for a national tax dispute settlement framework.

The standards for the resolution of tax disputes at a comparative level are not the subject of this paper; however, it remains notable that the Directive on tax dispute resolution mechanisms serves as an indicator of trends at the European level. Thus, although data point to the shortening of the duration of tax disputes in national frameworks before first-instance courts based on the Directive on Tax Dispute Resolution Mechanisms,[37] the standards at the European level are clear.[38]

Croatia implemented this directive by adopting the Tax Dispute Resolution Mechanism Act.[39] The working documents of the Croatian Parliament state the goal of the Directive and the law itself, which lies in the need to ensure the efficient and effective resolution of disputes in cases of double taxation, with the complete elimination of double taxation.

To improve the tax dispute settlement mechanisms between Member States, a uniform and harmonised implementation of the rules on tax dispute settlement mechanisms is necessary. While this is essential in the global fight against tax evasion and avoidance, this shift also has implications at the national level, where there is a need for new or alternative mechanisms for tax dispute settlement, including adjustments at the levels of tax authorities and at the judicial level. New tax dispute settlement mechanisms in Europe are equally important or required for purely domestic national tax disputes. European tax dispute resolution standards can also become requirements for national tax practices. The Croatian tax community emphasises the importance of the equal interpretation and application of European legislation in all Member States. According to existing research,[40] the main issue with the taxation system in Croatia is legal security.[41]

36 See: Gadžo and Žunić Kovačević, 2019, p. 345.

37 Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, OJ L 265, 14.10.2017, 1–14.

38 See: Groen, 2022.

39 Tax Dispute Resolution Mechanisms Act (cro. Zakon o mehanizmima rješavanja poreznih sporova u Europskoj uniji), Official Gazette No. 98/19.

40 Bejaković and Bezeredi, 2019; Žunić Kovačević, 2016.

41 Koharić, 2018.

4. Information exchange and mandatory disclosure rules as tools for fighting tax avoidance and fraud

Following developments in the field of global administrative cooperation, which began in 2009 with the acceptance of the automatic exchange of information as the global standard of tax transparency,[42] efforts have been made within the Croatian tax system to enable exchanges of information. The tax policy approach to addressing issues of tax transparency and fighting tax evasion confirms an awareness of the benefits of higher tax transparency. Information exchange has undergone a complex transformation from a secondary instrument to the most important globally accepted instrument for fighting tax evasion. Further, it also plays an important role in providing countries with information on the income their residents earn and the property they hold in other countries; that is, with information useful for the revenue side of fiscal policy.

The EU started harmonising administrative cooperation through the provisions of the Directive on Mutual Assistance in Direct Tax Matters in 1977.[43] This work continued with the adoption of the Savings Directive in 2003,[44] which enabled the automatic exchange of information. However, these efforts did not provide a sufficient legal basis for the global exchange of information; thus, a new directive on administrative cooperation in tax matters (the DAC) was adopted in 2011. The DAC and its amendments included elements of the BEPS initiatives. The DAC did not stop at the exchange of information on direct taxes, but ensured fiscal transparency by expanding the scope and requirements of amendments related to automatic exchanges of information (DAC 2), automatic exchanges of tax rulings and advance pricing agreements (DAC 3), automatic exchanges of country-by-country reports (DAC 4), access to beneficial ownership information collected pursuant to anti-money-laundering legislation (DAC 5), and automatic exchanges of reportable cross-border arrangements (DAC 6), with tax transparency rules for reporting by digital platforms (DAC 7). Globally, the exchange of information on tax matters is mostly related to direct taxes; however, there is a similar procedure for indirect taxes, such as value-added tax (VAT). The exchange of information on VAT is prescribed by Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT with current amendments.

As of 2014, financial intermediaries had assumed increased importance and EU institutions decided to take legislative action. First, they enacted the Savings

42 For more examples, see: Gadžo and Klemenčić, 2017.

43 Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, OJ L 336, 27.12.1977, 15–20.

44 Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, OJ L 157, 26.6.2003, 38–48.

Directive[45] to ensure the effective taxation of the taxable savings income of residents in all Member States in the form of cross-border interest payments. Subsequently, the DAC 2 was introduced, amending the directive regarding the mandatory automatic exchange of information in the field of taxation. The latter instrument focuses on the role of financial intermediaries, laying down a series of duties which must be strictly followed and correctly carried out to grant the transmission of taxpayer data to competent authorities. Finally, Directive 2015/2376/EU was adopted to ensure the mandatory automatic exchange of advance cross-border rulings and pricing arrangements. Moreover, the focus was on the role of financial intermediaries; in particular, attention was paid to analysing their duties and approaches to balancing taxpayers' privacy rights with the state's taxing power.

It should be mentioned that the adoption of advanced rulings, as an instrument of harmonisation in the tax field, played an important role in achieving additional benefits for taxpayers as well as tax security (one of the basic general principles of the rule of law). Notably, the judicial treatment (which generally served as a public rule) of the public opinions of the tax authorities in Croatia's tax community were seriously criticised. These criticisms were well-justified; accordingly, there were demands to adopt and apply a *bona fide* principle of taxation to introduce advance rulings.[46] European legislation enhanced and accelerated the achievement of legal certainty and acted in good faith in the tax procedure; that is, harmonisation in the introduction of the advanced ruling institute prompted the Croatian legislature to accept and implement this important instrument for achieving taxpayer tax security. Thus, the status of public and general opinion has also been improved in such a way that it was, as a consequence of harmonisation, implemented in GTA provisions and the accompanying Ordinance on *bona fide* tax procedures.[47]

Numerous other institutes based on European legislation were also introduced by the Croatian tax system to secure a more favourable or safer position for taxpayers. Debate on the eventual justification of such changes among Croatian academics and

45 Directive 2014/48/EU of 24 March 2014 amending Directive 2003/48/EC on taxation of savings income in the form of interest payments, OJ L 111, 15.4.2014, 50–78.

46 See: Arbutina, Žunić Kovačević and Gadžo, 2022. '[…] those opinions is clear – they are not, and cannot be, the source of law. They are, however, broadly published in specialized professional journals and widely read by taxpayers as hints of the course the Croatian tax administration will direct its actions in some particular category of cases […] Such a situation cannot, by and standard legal criterion, be justified. It induces legal uncertainty, since, on the one hand, opinions cannot be legal argument, and, on the other, they cannot be ignored either […] it turns out that they are an informal (de facto) legal source, albeit with an unclear status'.

47 Ordinance on the implementation of the General Tax Law, Official Gazette No. 45/19, 35/20, 43/20, 50/20, 70/20, 74/20, 103/20, 114/20, 144/20, 2/21, 26/21, 43/21, 106/21, 144/21, 156/22, replaced the Ordinance on acting in good faith of participants in the tax-legal relationship, the economic entity and the forms for reporting facts for which there is an obligation to report and declarations about the sources of acquisition of property, Official Gazette No. 59/09, 115/16, 30/17.

professionals was absent because such changes were considered necessary and were realised thanks to the implementation of EU legislation. Admittedly, the practice of concluding advance rulings and advance pricing agreements is not very comprehensive; however, it is comparable to practices in countries that were simultaneously reconstituting their tax systems in the same way to adapt to and harmonise with EU law, as evidenced by Slovenia's changes to tax legislation and advanced rulings.[48]

Croatia actively supports international efforts to tackle tax evasion and is one of the 'early adopters' of tax transparency initiatives regarding the automatic exchange of information. This was confirmed by analysing the implementation of the exchange of information included in tax treaties.[49] The Multilateral Convention on Mutual Administrative Assistance in Tax Matters,[50] a multilateral instrument developed by the OECD and the Council of Europe for exchanges of information, was signed in 2013. The Convention provisions served as the legal basis for the implementation of the US Foreign Account Tax Compliance Act, FATCA and OECD/DAC Automatic Exchange of Information Instruments.[51] Notably, given that Croatia did not have a tax treaty in force with the US, the Convention served as the legal basis for Croatia's automatic exchanges of information.[52]

The provisions of the DAC and its amendments have been transposed in the form of a separate piece of legislation: The Act on Administrative Cooperation in Tax Matters. The provisions for administrative cooperation were previously part of the GTA. With the adoption of the FATCA and the increase in DAC provisions, the legislature decided to include all international exchanges of information provisions within a single act. The Ministry of Finance, Tax, and Customs Administration has the authority to implement administrative cooperation. This Act sets out the rules for administrative cooperation in the field of taxation between the Croatia and EU Member States, automatic exchanges of information on financial accounts between Croatia and other jurisdictions, automatic exchanges of information for country-by-country reporting between Croatia and non-EU jurisdictions, and the implementation of the FATCA agreement between Croatia and the US.

Powerful anti-avoidance and anti-tax evasion tools, which positively influence the revenues of participating governments, may be caught up in administrative constraints and the absence of resources for revenue bodies that have to effectively implement the aforementioned global and European standards. Taxpayers' duties have increased domestically and internationally with the global development of information exchanges; therefore, the positions of taxpayers and the protection of

48 See: Kovač, 2019.

49 See: Klemenčić and Klun, 2022.

50 Law on Confirmation of the Convention on Mutual Administrative Assistance in Tax Matters, as amended and supplemented by the Protocol Amending and Amending the Convention on Mutual Administrative Assistance in Tax Matters, Official Gazette – International Contracts No. 1–6/14.

51 Seer and Kargitta, 2020.

52 See: Gadžo and Klemenčić, 2017.

their rights should remain the focus of all tax law amendments. Taxpayer rights, including the right to fair process, privacy protection, and procedural rights, should be preserved. All these rights are well defined in domestic national law, with equally effective national protection. Any additional instrument with the same purpose – global or European – is desirable. However, global and European benefits and exchanges of information simultaneously bring the risk of breaches of the minimum standard of taxpayers' fundamental rights: the right to be informed and heard, the right to appeal, the right to pay an exact amount of tax, the right to certainty, the right to privacy, and the right to confidentiality and secrecy. Exchanges of information are designed to prevent double taxation, which is useful not only for taxpayers, but also for states seeking to combat tax evasion and avoidance. Protecting taxpayers' interests is crucial because the exchange of information is related to personal and potentially confidential information. Therefore, governments must consider taxpayer interests when fulfilling their obligations to exchange information.[53]

4.1. Peculiarities in domestic legislation: Applicable rules in addition to EU law

While general efforts have been made to tackle tax avoidance, it should be noted that Croatia's tax legislature follows global and European proposals. This was the case with the previously mentioned introduction of GAAR and TAARs (as well as special anti-avoidance rules [SAARs]) in the Croatian tax system and global or European standards for administrative cooperation and exchanges of information. Further, even before the global or European standards, the Croatian tax system already prescribed a general anti-avoidance rule through a provision on fictitious legal transactions in the GTA; specifically, this provision stipulated, if another legal transaction is concealed by a fictitious legal transaction, the basis for determining the tax liability is then the concealed legal transaction. This implies that the Croatian tax system was aware of the 'principle of preventing the abuse of legal norms' as a general anti-avoidance rule. This provision was examined under case law and confirmed by the decisions of the High Administrative Court of the Republic of Croatia. Moreover, after the global financial crisis of 2012 and before the EU accession, Croatian tax authorities focused on financial discipline and proposed piercing the corporate veil for tax purposes, thereby highlighting another instrument for preventing tax avoidance.

53 Oberson, 2015, pp. 4–13.

5. Concluding remarks

The introduction of EU tax law provisions into the Croatian tax system has both advantages and challenges. On the one hand, it enhances legal certainty and helps combat tax evasion. However, it requires careful consideration of the differences between the Croatian and EU tax systems, as well as the potential conflicts and inconsistencies that may arise. Overall, the harmonisation of Croatian tax law with EU law provides a framework for the continued development and improvement of the tax system.

As in other countries, the obligation to pay taxes in Croatia stems from the constitutional principle of the ability to pay. Art. 51 of the Constitution states that every person should participate in the defrayment of public expenses in accordance with his/her economic capacity. The Constitution also stipulates that the tax system should be based on the principles of equality and equity, establishing the paramount objectives of Croatian tax policy. These constitutional principles are reflected in diverse statutory provisions. For example, provisions of the GTA oblige parties in a tax relationship to act in good faith; that is, to conduct themselves conscientiously and fairly in accordance with the law. Recent global and European efforts to stop tax avoidance are especially important when reviewing tax systems. Notably, tax avoidance undermines both dimensions of equity: horizontal equity is endangered because the share of the tax burden borne by two taxpayers with equal economic faculties differs depending on their tax planning schemes; meanwhile, vertical equity is endangered because tax avoidance schemes are largely a privilege for high-income earners, limiting the tax system's progressiveness.[54] Consequently, this constitutional principle justifies anti-avoidance legislative instruments in Croatia.

In conclusion, the above review suggests that the introduction of EU tax law provisions in the Croatian tax system has involved many benefits and challenges. Although Croatian tax legislation did not contain a rule defined as a GAAR, certain provisions which follow the same underlying objectives can be found in the first stages of Croatia's tax system. The GTA effectively codified the 'Substance Over Form' principle in the process of determining tax facts. Additionally, the GTA provides, '(I)f the revenue, income, profit or other assessable benefit was acquired without a legal basis, the tax authority shall determine the tax liability in accordance with a special law regulating certain types of taxes'. The implementation of this principle allows the tax administration to tax profit acquired even by a criminal act with the basic idea of taxing the underlying economic substance – the general legal character of the action or transaction that led to the profit is irrelevant. The implementation of European legislation created a more complex legislative framework to combat tax avoidance. The judicial control of taxation in individual tax decisions confirms the importance of tax security, fundamental principles, and the need for the effective protection of taxpayers' rights. Compared with other countries, the Croatian

54 Gadžo and Klemenčić, 2014, pp. 277–302.

approach to the implementation of European and global fiscal and tax standards seems to be underdeveloped or fragmented.

A brief look *de lege lata* and *de lege ferenda* suggests that the Croatian tax legislation landscape would undeniably benefit from further improvements, especially regarding the acceptance and transfer of tax procedures and improvements at the European and international level into the Croatian national legal framework. Regarding the relationship between the government and taxpayers, Croatia seems to be a novice to democracy. While some tax measures introduced in the Croatian tax system in the last decades have been linked with the inputs and advice of foreign experts as well as EU institutions and other international organisations, it seems that domestic legislators have gradually come to terms with the prescient words of the late Professor Jelčić, who insisted that any tax system should be adapted to a country's socioeconomic specificities and that European solutions cannot be copied in Croatian tax law.[55]

55 Gadžo, 2017, pp. 179, 182–188.

Bibliography

Arbutina, H. (2012) 'Ustavna i nadnacionalna ograničenja ovlaštenja na oporezivanje', *Zbornik Pravnog fakulteta u Zagrebu*, 62(5–6), pp. 1283–1322.

Arbutina, H., Rogić Lugarić, T., Cindori, S., Bogovac, J., Čičin-Šain, N., Reiner, I. (2016) 'Croatia' in Lang, M., Owens, J., Pistone, P., Rust, A., Schuch, J., Staringer, C., Storck, A. (eds.) *Trends and Players in Tax Policy.* Amsterdam: IBFD, pp. 275–298.

Arbutina, H., Žunić Kovačević, N., Gadžo, S. (2022) 'Croatia' in Essers, P. (ed.) *History and taxation: the dialectical relationship between taxation and the political balance of power.* Amsterdam: IBFD, pp. 195–220.

Bartlett, W. (2018) 'The new kid on the block: Croatia's EU membership in the shadow of the Eurozone crisis' in Schweiger, C., Visvizi, A. (eds.) *Central and Eastern Europe in the EU: Challenges and perspectives under crisis conditions*. New York: Routledge, 149–162; https://doi.org/10.4324/9781315230986-11.

Bejaković, P., Bezeredi, S. (2019) 'Determinants of Tax Morale in Croatia: an Ordered Logit Model', *Business Systems Research*, 10(2), pp. 37–48; https://doi.org/10.2478/bsrj-2019-016.

Čičin-Šain, N. (2013) 'Conference: Trends and Players in Tax Policy', *Zagrebačka pravna revija*, 2(2), pp. 297–301.

Čičin-Šain, N. (2016) 'Reflections on the Structure of Croatian Measures for Limiting the Deductibility of Financial Expenses: Efficiency vs Compatibility', *Croatian Yearbook of European Law & Policy*, 12(1), pp. 145–170.

Čular, G., Grbeša, M. (2020) 'Croatia' in Hloušek, V., Kaniok, P. (eds.) *The European Parliament Election of 2019 in East-Central Europe.* Cham: Palgrave Macmillan, pp. 39–60; https://doi.org/10.1007/978-3-030-40858-9_3.

Duić, D., Petrašević, T. (2019) 'Five years of application of EU law: an analysis of cases involving breaches of EU law against the Republic of Croatia and references for preliminary ruling by Croatian courts', *Godišnjak Akademije pravnih znanosti Hrvatske*, 10(1), pp. 65–95; https://doi.org/10.32984/gapzh.10.1.4.

Dujmović, A. (2020) 'Beneficial Ownership and Abuse of Law Interplay Analysis in the Light of the European Court of Justice's New Jurisprudence', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 41(1), pp. 353–374; https://doi.org/10.30925/zpfsr.41.1.16.

Edgar, T. (2008) 'Building a Better GAAR', *Virginia Tax Review,* 27(4), pp. 833–905.

Essers, P. (ed.) (2022) *History and taxation: the dialectical relationship between taxation and the political balance of power.* Amsterdam: IBFD

de la Feria, R., Vogenauer, S. (eds.) (2011) *Prohibiton of Abuse: A New General Principle of the EU Law.* Oxford-Portland: Hart Publishing.

Gadžo, S. (2017) 'Tax Procedure Law in Transition: Croatian Experience' in Milosavljević, B., Jevremović Petrović, T., Živković, M. (eds.) *Law and Transition: Collection of Papers.* Belgrade: University of Belgrade, Faculty of Law, pp. 177–189.

Gadžo, S. (2019) 'Using tax policy to address brain drain and depopulation: The case of Croatia', *Anali Pravnog fakulteta u Beogradu*, 67(4), pp. 116–146.

Gadžo, S., Klemenčić, I. (2014) 'Time to stop avoiding the tax avoidance issue in Croatia? A proposal based on recent developments in the European Union', *Financial theory and practice*, 38(3), pp. 277–302; https://doi.org/10.3326/fintp.38.3.2.

Gadžo, S., Klemenčić, I. (2017) 'Effective international information exchange as a key element of modern tax systems: promises and pitfalls of the OECD's common reporting standard', *Public Sector Economics*, 41(2), pp. 207–226; https://doi.org/10.3326/pse.41.2.3.

Gadžo, S., Žunić Kovačević, N. (2019) 'Retroactive Application of the Rules of Piercing the Corporate Veil in Tax Matters: An Analysis of Croatian Administrative and Judicial Practice', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 40(1), pp. 345–378; https://doi.org/10.30925/zpfsr.40.1.13.

Groen, G. (2022) *Sovereignty and tax treaty dispute settlement: The types of tax treaty disputes and the desirable level of judicialization of the settlement procedure from a sovereignty perspective.* Amsterdam: University of Amsterdam, Faculty of Law.

Kassim, H., Lyons, B. (2013) 'The New Political Economy of EU State Aid Policy', *Journal of Industry, Competition and Trade*, 13(1), pp. 1–21; https://doi.org/10.1007/s10842-012-0142-9.

Klemenčić, I., Klun, M. (2022) 'Exchange of Information in Tax Matters: Experiences from Croatia and Slovenia', *Hrvatska i komparativna javna uprava,* 22(4), pp. 605–632; https://doi.org/10.31297/hkju.22.4.5.

Koharić, Z. (2018) 'Primjena prakse Europskog suda u poreznim stvarima', *Zbornik radova Pravnog fakulteta u Splitu,* 55(1), pp. 221–230; https://doi.org/10.31141/zrpfs.2018.55.127.221.

Kovač, P., Dobelšek, A. (2021) *Advance Rulings as a Tax Transparency Tool: Trends from the EU to Slovenia*. *NISPAcee Conference, Ljubljana, October 2021, WG9 The Rule of Law & Public Administration* [Online]. Available at: https://www.nispa.org/files/conferences/2021/e-proceedings/system_files/papers/NISPAcee21_KovacDobelsek.pdf (Accessed: 30 November 2023).

Kovač, P. (2019) 'Slovenia on the Path to Proactive Transparency' in Dragos, D. C., Kovač, P., Marseille, A. T. (eds.) *The Laws of Transparency in Action. Governance and Public Management*. Cham: Palgrave Macmillan, pp. 295–337; https://doi.org/10.1007/978-3-319-76460-3_8.

Kuźniacki, B. (2019) 'The C.J.E.U. Case Law Relevant to General Anti-Avoidance Rule (G.A.A.R) under Anti-Tax Avoidance Directive (A.T.A.D)', *University of Bologna Law Review,* 4(2), pp. 261–282; https://doi.org/10.6092/issn.2531-6133/10023.

Materljan, I. (2019) 'Hrvatski predmeti na sudovima Europske unije', *Godišnjak Akademije pravnih znanosti Hrvatske*, 10(1), pp. 211–271; https://doi.org/10.32984/gapzh.10.1.10.

Oberson, X. (2023) *International Exchange of Information in Tax Matters. Towards Global Transparency.* 3rd edn. Cheltenham: Edward Elgar Publishing; https://doi.org/10.4337/9781800884915.

Perić, R., Kordić, L., Mesarić, V. (2014) 'The Role of Taxation during the Financial Crisis 2008–2013: Selected Issues', *Pravni vjesnik*, 30(1), pp. 115–133.

Prebble, J. (2017) 'General Anti-Avoidance Rules: Enactments from the World', *Victoria University of Wellington Legal Research Papers*, 2017/170, pp. 1–102.

Seer, R., Kargitta, S. (2020) 'Exchange of information and cooperation in direct taxation' in Panayi, C. H., Haslehner, W., Traversa, E. (eds.) *Research Handbook on European Union Taxation Law.* Cheltenham: Edward Elgar Publishing, pp. 489–510; https://doi.org/10.4337/9781788110846.00033.

Šimović, H., Blažić, H., Štambuk, A. (2014) 'Perspectives of tax reforms in Croatia: expert opinion survey', *Financial theory and practice*, 38(4), pp. 405–439; https://doi.org/10.3326/fintp.38.4.2.

Šimović, H., Deskar-Škrbić, M. (2019) 'Fiscal Policy and European Semester in Croatia: Why Should We Focus on Public Debt?' in Petak, Z., Kotarski, K. (eds.) *Policy-Making at the European Periphery. New Perspectives on South-East Europe*. Cham: Palgrave Macmillan, pp. 169–186; https://doi.org/10.1007/978-3-319-73582-5_9.

Škalamera-Alilović, D., Rubinić, I. (2016) 'The Tax System as a Generator of Economic Inequality in Croatia' in Primorac, Z., Bussoli, C., Recker, N. (eds.) *Book of Proceedings: 16th International Scientific Conference on Economic and Social Development – The Legal Challenges of Modern World.* Split: Varaždin, Development and Entrepreneurship Agency, Faculty of Law, University of Split, University North, pp. 459–477.

Van Apeldoorn, L. (2016) 'International taxation and the erosion of sovereignty' in Dietsch, P., Rixen, T. (eds.) *Global tax governance: What is wrong with it and how to fix it.* Colchester: ECPR Press, pp. 215–230.

Wattel, P. J., Marres, O., Vermeulen, H. (eds.) (2018) *Terra/Wattel – European Tax Law, Volume I.* 7th edn. Deventer: Wolters Kluwer.

Žunić Kovačević, N. (2016) 'Advance Tax Rulings – The New Legal Instrument in the Croatian Tax Procedure', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 37(1), pp. 267–289; https://doi.org/10.30925/zpfsr.37.1.10.

Žunić Kovačević, N. (2020) 'Prilagodba hrvatske porezne uprave Europskoj uniji', *Zbornik radova Pravnog fakulteta u Splitu*, 57(1), pp. 195–209; https://doi.org/10.31141/zrpfs.2020.57.135.195.

Žunić Kovačević, N., Gadžo, S. (2013) 'Institut zakonskog poreznog jamstva nakon novele Općeg poreznog zakona 2012.: „proboj pravne osobnosti" trgovačkih društava u slučaju zloporabe prava', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 34(1), pp. 393–416.

Žunić Kovačević, N., Gadžo, S. (2018) 'Tax-Related Risks of Mergers and Acquisitions in Croatia: Drawing the Line between Legitimate Business Restructuring and Aggressive Tax Planning', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 39(4), pp. 1731–1747; https://doi.org/10.30925/zpfsr.39.4.10.

Žunić Kovačević, N., Kovač, P. (2023) 'Izazovi poreznog nadzora između pravila i prakse u Hrvatskoj i Sloveniji', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 44(1), pp. 59–85; https://doi.org/10.30925/zpfsr.44.1.3.