

TAX ASPECTS OF FUSIONS AND ACQUISITIONS OF COMPANIES

IMPOZITELE DE FUZIUNE ȘI ACHIZIȚIE A ÎNTREPRINDERILOR

CIURARIU GABRIELA

The University “Petre Andrei” Iași

Abstract. *Each transaction of fusion or acquisition is single and requires the examination of several particular factors which must be analysed during preliminary control. In each situation, tax planning will constitute an important and complex stage. This is why it is imperative to plan these transactions carefully in order to reduce the tax burden of the salesman and to make the transaction least expensive possible from a point of view tax for purchaser.*

Rezumat. *Fiecare tranzacție de fuziune sau achiziție este unică și implică analiza preliminară a factorilor particulari. În fiecare situație, planificarea impozitelor constituie o etapă importantă și complexă. De aceea se impune pregătirea atentă a acestor tranzacții în scopul reducerii sarcinii fiscale a vânzătorului și, de asemenea, diminuării efortului cumpărătorului.*

INTRODUCTION

The central objective of the transactions of fusions and acquisitions, the companies try to be dissociated their competitors and to increase thus richness of their shareholders. Tax repercussions relative to these transactions are often considerations major. crucial stage to carry out a transaction successfully of fusion or acquisition is the preliminary control (due diligence review) which a whole of procedures includes/understands of investigation and examination having for object obtaining rather large numbers information about salesman in order to prevent the bad ones surprised being able to occur after enclose transaction of fusion or of acquisition.

MATERIAL AND METHOD

The mandate of preliminary control is entrusted to a team of professionals who generally includes auditors and legal advisers.

This stage calls upon several disciplines, of which accountancy, finance, management, the taxation, strategy financial and right. Moreover, analysis must be carried out in an integrated way. From the tax point of view, the transaction of fusion or acquisition can to aim at the acquisition and the sale of the actions or the acquisition and the sale of the credits.

In the event of acquisition actions of a company preliminary control allows the evaluation of the tax profile of the target company in order to hold of it account at the time of the negotiation of the price of acquisition.

The auditors grant also a detailed attention with convincing elements concerning assessed valuation of each credit held by the target company, with the losses deferred and their source, and with the other deductions. The tax elements usually re-examined during preliminary control are:

- Balance deferred of the tax credits to the investment
- Balance of the losses other than in capital
- Balance of the losses of capital
- Balance of the categories of damping tax (FNACC)
- Deduction for small company
- Benefit of manufacture and transformation
- Tax credits for the activities of scientific research and development experimental
- Tax credits for creation acceptable employment.

Connections between the financial statements and the income tax returns by examining particularly the related notes with the income taxes and the possibilities allows to update litigations with the tax authorities.

The legal aspect of preliminary control accentuates the official reports in order to recall likely operations to involve tax consequences like the declarations of dividends in capital or distributions under form reduction of the versed capital. It is necessary to analyze all the important contracts in order to determine the elements being able to have a tax impact.

The documents examine by the jurists are the following:

- Register of the shareholders
- Agreements governing the modes of options to buy of actions
- Contracts of acquisition of credits
- Contracts of financing.

To make sure of the respect of tax choices, the salesman sign a "letter of declaration" in which one certifies that it will carry out them tax choices in accordance with the agreement intervened with the purchaser. In this letter, the salesman attests that them information and tax documents that it provided within the framework of preliminary control are exact and complete.

The letter of declaration can lay down the payment by the salesman of one compensation for various reasons, as in the cases of abuse confidence or of contributions of taxes for years former to acquisition; the calculation of the compensation being envisaged in the contract of purchase. The other clauses laid down in this letter of declaration are:

- Clauses certifying the production of the income tax returns within the deadlines
- Clauses certifying the payment of all the taxes
 - to define the word "taxes"
 - Income tax
 - Deductions with the source
 - Customs etc.
- Clauses envisaging the outcome of certain problems such as:
 - Contributions of taxes for years former to acquisition
 - Refunding of taxes for years former to acquisition

RESULTS AND DISCUSSIONS

Like principal methods to carry out a project of fusion or of acquisition the economic literature retains the acquisition and the sale of the credits and acquisition and the sale of the actions. By tax reason, the salesman usually prefers to yield its actions (it carry out a capital gain of which a part is not taxable). The tax advantage sale of the actions is even larger if several private individuals hold the actions because each one of them to exemption be is entitled.

In the case of the sale of the credits, shareholders of the target company cannot generally profit advantages related to the capital gains; the company of which they are shareholders must pay taxes on the tax profits relating to the transfer of the credits and liquidation of the company involves for them a taxable dividend.

As regards purchaser, the acquisition of the credits proves to be the most advantageous method on the plan tax; the amount used for calculation of tax damping corresponds at the price paid for the goods and this paid price generally the assessed valuation of the goods exceeds belonging at the target company, the deduction for damping will be raised in future exercises.

In other words, the tax considerations constitute a major stake in the negotiations; to minimize the tax consequences for the salesman, this last could accept a less price, it salesman should logically accept the offer which will get the amount to him after taxes highest.

In the event of the acquisition of the credits, the risk is in general less low than that which rises from the purchase of the actions. Because the purchaser is not responsible for the tax past of the company acquired, control precondition is limited mainly to checking of the distribution of the price of purchase agreed upon between the parts (when credits are acquired or sold in block) and for respect of the joint tax choices.

With regard to the purchase price, the purchaser normally may find it beneficial to affect a greater part of the price of acquisition to the goods profiting of an accelerated rate of depreciation. Interests of the salesman in distribution of the selling price are with opposite of those of the purchaser.

The goal of the salesman is to minimize them taxes resulting from the sale of the credits, it generally may find it beneficial to allot the greatest proportion product of the sale to the categories goods whose transfer involves less tax consequences. He will want also to minimize the allocated amount with the goods in inventory or the redeemable goods being the subject of a high recovery of the deduction for damping.

Another advantageous tax choice is offered with regard to the accounts customers, in the American law being envisaged the possibility of purchaser of deducing from the income the bad debts or to establish a provision in their connection following the purchase of the company. As for the salesman of the accounts customers, the same law allows him to entirely deduce, as loss, the

difference between the face value of the clients' accounts and the proportion of the price selling awarded to the latter.

The purchaser can claim, in the year of acquisition, for the redeemable goods a deduction for damping which do not exceed half of the amount which it could normally deduce. In the event of the salesman, the transfer of redeemable goods with an amount more raised than the paid price involves the recovery of the deduction for damping and the realization of a profit in capital.

In acquisition of the actions, a basic concept is that of acquisition of the control which can take place during acquisition of a sufficient number of actions resulting in transferring its statutory audit of the salesman to the purchaser.

Some operations, such as one repurchase of actions or cancellation actions, can involve an acquisition of control for tax purposes.

Tax consequences rising from an acquisition of control are many:

1. Firstly, the company whose control was acquired is famous to have an end of the year of imposition at the date of acquisition of control, and a new year of assessment is considered to start at this time.

2. A second consequence of the application of the rules on acquisitions of control relates to the losses other than in capital. Usually, all the losses which are undergone before the acquisition of control cannot be deferred against profits or profits carried out afterwards the date of acquisition of control. Of even, undergone deferred losses after the date of acquisition of control cannot be used against profits or of the profits carried out before go back to acquisition of control. However, of the particular rules apply the losses in the case of firms selected "different losses than in capital" for tax purposes.

Indeed, the losses undergone before the acquisition of control can be deductible if the company whose control was asset continues to exploit the same one company or a similar company with a reasonable expectancy of profit.

3. Thirdly, the tax law contains particular restrictions with regard to the losses which are not carried out. Indeed, the latent losses, which consist of losses not carried out on goods such as redeemable goods, goods irredeemable, goods in acceptable fixed assets, stocks and the clients' accounts, are famous being realized immediately before the date of acquisition of control. Moreover, any latent final loss on a redeemable good it increases the balance of different losses than in capital and can be deducted only if the same company or a similar company is exploited.

4. Finally, the purchaser wants to profit from the balances of account of dividend in capital (which includes the nontaxable portion of the capital gains Nets carried out by the target company which the payment of the free dividend allows of impôt 11) and account of tax in refundable hand with title of dividend (which is constituted of taxes which were paid by the company on its incomes of placements and on certain dividends and which would be refunded at the target company when it pours dividends with its shareholders) of the target company.

CONCLUSIONS

Legal expenses and accountants represent a share important of the expenses engaged at the time of one transaction of fusion or acquisition. For the purchaser, these expenses are not deductible in the year during which they were committed because they are by capital type and increase it rather cost of the acquired goods. In the case of the acquisition of the actions of a company, the legal and countable expenses increase the cost of the actions only if acquisition is successful. If they are related with a missed attempt at acquisition actions, they can be treated like a good in immobilization acceptable if the company can show that acquisition envisaged the integration of the activities of the acquired company with that of the purchaser. In the case opposite, the committed expenses could not to get any tax advantage. As for the expenses engaged by salesman, they constitute deductible expenditure for tax purposes.

Acquisition can be financed by the payment of a counterpart monetarist regulated with very the liquidities of the purchaser, the financing external or by the emission actions.

A) Financing of acquisition with the surpluses of liquidities of the purchaser does not involve a particular tax consequence.

B) In the case of a financing by loan, the principal concern of the purchaser is to ensure itself of the deductibility of the interests. If the purchaser does not have the assessed incomes necessary (of which it can withdraw them interests), it can plan acquisition so that the interests are deductible for the target company.

C) In the case of a financing by actions, the purchaser must realize that the payment of dividends to the shareholders can involve one cost of higher financing because the dividends are not deductible from the assessed income. If the financing is carried out by the issue of shares, the expenses related with this emission must also be capitalized and deadened over five years.

The tax authorities specify that expenses of financing engaged with regard to an emission actions cannot be deductible that if the company carries out really the transaction of fusion or acquisition.

The impact of a Fusion Acquisition on the policies human resources is generally very important. Remuneration is in the middle of the problems of the bringings together of companies. The questions to study go from the upstream (accounting of social engagements in IFRS, remuneration and development of consumer loyalty of the leaders) until the harmonization of the policies of remuneration, of the staff regulations as regards classification, variable remuneration and welfare benefits. These interventions also cover with the key aspects of the success of these projects of fusion with the remuneration of commercial which are key in the success of the objectives of fusion and bringing together of companies.

REFERENCES

1. **André P., Ben Amar W., L'Her J.-F.**, 2000 - *Regroupements d'entreprises et création de valeur*. Gestion, vol. 25, n° 3
2. **Dobre Elena**, 2006 - *Fuziuni si achizitii de intreprinderi*. Tribuna economica v. 17, nr. 16, p. 64-68
3. **Hurduzeu Gh.**, 2003 - *Achiziții și fuziuni de firme: cazuri celebre*. Ed. Economica.
4. **Hurduzeu Gh., Suta N.**, 1999 - *Achizițiile internaționale de firme pe piața de capital*. ASE
5. **Ionescu L.**, 2005 - *Analiza fuziunii societăților comerciale si evaluarea patrimoniului*. Tribuna Economica v. 16, nr. 3, p. 58-60
6. **Meier O., Schier G.**, 2006 - *Fusions Acquisitions: Stratégie, finance, management*. Ed. Dunod, Paris.
7. **Radu E.**, 2004 - *Fuziuni și achiziții în România*. Tribuna economica v. 15, nr. 20, p. 18-19
8. **Tudor A., Fatacean GH.**, 2006 - *Achizițiile de acțiuni și drepturile aferente*. Contabilitatea, expertiza si auditul afacerilor nr. 12, p. 21-27