THE "PARENT" COMPANY, PART OF THE ACCOUNTING ENTITY GROUP, IN THE CURRENT NATIONAL AND INTERNATIONAL LEGISLATIVE CONTEXT

Eugeniu, Țurlea[1]
Mihaela-Daciana, Nanu[2]

Abstract:
Study's objectives include:
1. Knowledge of the economic context of classification of the parent company in the group of accounting entities, in order to establish the development needs, resources and the activity conduct of private economic group versus State-held economic group.
2. Systematic analysis of the economic potential at the legislative level, in order to identify differences in corporate governance as an instrument to increase the performance of private economic interest group versus State-held group and integration into a general descriptive context to facilitate the use of available information in their field of interest, the exchange of experiences and best practices.
The premise of this paper is intended to be a starting point in an active approach and encouragement of economic entities to meet economic groups in order to have easier access to sources of funding and to provide economic stability and credibility in the industry where they activate.
The research is experimental, both qualitative and quantitative, by explaining the current national and international legal context of the studied phenomenon.
The information are based on the bibliographical and direct documentation on reality, direct contact of primary documents, as well as on decision-making persons in such group companies.
Information about the status of the studied phenomenon anchored in the national economic reality is estimated to be obtained.

Keywords: *group of companies, corporate governance , group of economic interest , budgetary, parent company.*

JEL classification: G02, H30, H32

Foreword

Distinct entities for economic values managements, whether natural persons or legal entities having the bookkeeping as their scope of business activity, stand out as accounting entities, by virtue of the Accountancy Law no. 82 / 1991, as republished (2008) and updated by virtue of Government Emergency Ordinance no. 37/2011 for the amendment and adjustment of the Accountancy Law no. 82/1991 as well as for the amendment of other incidental normative deeds (Official Gazette no. 285 from April the 22nd 2011).

Subject to the form of property over the capital, the accounting entities are:

- state property(national enterprises / companies, self administrations (SA), national research development institutes - NRDI) and
- private property(social property enterprise - private company, personal enterprise - one single person shall contribute to the entire share capital, shall be the direct leader and shall be liable with the latter's estate for the obligations having been undertaken).

In order to classify the parent company within the current internal and international legislative system, one has considered the following:

1. The national framework for the regulation and enforcement of group companies;
2. The impact of group companies on the Romanian accounting system;
3. Corporate governance – an instrument for the enhancement of the performance of a private group of economic interest against a budgetary one.

[1] PhD., Faculty of Accounting and Management Information Systems, The Accounting and Audit Department, University of Economic Studies, Bucharest, Romania, E-mail:eturlea@yahoo.com
[2] PhD. candidate, Faculty of Accounting and Management Information Systems, The Accounting and Audit Department, University of Economic Studies, Bucharest, Romania, E-mail:daciana_nanu@yahoo.com

1. National framework for the regulation and enforcement of the group companies

From a legal perspective, one private company may organize its usual exterior structures – namely branches and subsidiaries, as well as its interior structures – agents (commercial representative offices).

An incidence to this fact may be found in the Norm of the National Bank of Romania no. 12 /2003 on the surveillance of solvency and high exposures of credit institutions, with the latter's subsequent amendments and adjustments, as well as in Law no. 161/2003 on certain measures for the ensuring of the transparency in terms of exercising public dignities, public functions and in the business environment, the prevention and sanctioning of corruption, with the latter's subsequent amendments and adjustments, Law no. 571 /2003 regarding the tax code, as republished, with the latter's subsequent amendments and adjustments.

Norm of the National Bank of Romania no. 12/2003 on the surveillance of solvency and high exposures of credit institutions, with the latter's subsequent amendments and adjustments, shall address the credit institutions, Romanian legal entities and shall regulate the surveillance of solvency and high exposures, on both an individual and consolidated basis. Within this norm of the National Bank of Romania, under art.2 one defines the terms, therefore: point 11 of the same Norm of the National Bank of Romania defines the *parent company* both within the meaning stipulated by the Law no. 58/1998 regarding the bank activity in Romania, with the latter's subsequent amendments and adjustments, as well as within the meaning of any entity which, in the opinion of the National Bank of Romania, is actually exercising a dominant influence (control) over any other such entity; point 16 defines the group – several such entities (members), as reunited subject to a certain criterion.

Law no. 161/2003 on certain measures for the ensuring of the transparency in terms of exercising public dignities, public functions and in the business environment, the prevention and sanctioning of corruption, with the latter's subsequent amendments and adjustments, shall define and regulate the notion of *GEI – group of economic interest* _within Title V, chapter I, section 1, art.118, paragraph (1)- *Group of Economic Interest - GEI* shall stand for an association between two or several natural persons or legal entities, as established for a limited period of time, in view of facilitating or developing the economic activity of its members, as well as improving the outcomes of the said business activity.

Paragraph (2) of the same title defines the *Group of Economic Interest* as being the profitable legal entity, which may have the capacity of a trader or non - trader.

Law no. 571/2003 regarding the Tax code, as republished, with the latter's subsequent amendments and adjustments, within chapter III, art. 7, point 21, shall define and regulate the affiliated persons – one person shall be affiliated with another person if any such relation between the latter shall be defined by at least one of the following cases:

a) one natural person shall be affiliated with another natural person, if the same are husband / wife or relatives up to the third degree, as included. Between the affiliated persons, the price as per which one shall transfer the tangible or intangible assets or any services are provided shall stand for the transfer price.

b) one natural person shall be affiliated with a legal entity, if the natural person shall hold, either directly or indirectly, including the holdings of the affiliated persons, a minimum of 25 % of the value / number of the equity interests or rights of vote, as held at the legal entity, or if it shall actually control the said legal entity.

c) one legal entity shall be affiliated with another legal entity, if at least:

(i) the first legal entity shall hold, either directly or indirectly, including the holdings of the affiliated persons, a minimum of 25 % of the value / number of the equity interests or the rights of vote at the other legal entity, or if it actually controls the said legal entity;

(ii) the second legal entity shall hold, either directly or indirectly, including the holdings of the affiliated persons, a minimum of 25 % of the value / number of the equity interests or the rights of vote at the first legal entity;

(iii) one third party legal entity shall hold, either directly or indirectly, including the holdings of the affiliated persons, a minimum of 25 % of the value / number of the equity interests or the rights of vote both at the first legal entity, and at the second such legal entity.

Also, art.19 point 5 of the Tax Code stipulates that transactions between affiliated persons shall be carried out as per the principle of the free market price, according to which the transactions between affiliated persons shall be accomplished under the conditions established or imposed which shall not be different from the commercial or financial relations agreed upon between independent companies. Upon establishing the profits of the affiliated persons, one shall consider the principles regarding the transfer prices.

Technically, there shall always exist one such *group of companies* when, for instance, one company, hereinafter referred to as the *parent company*: shall hold the majority of the rights of vote of the shareholders or associates within another company, hereinafter referred to as a branch, or the parent company shall be a shareholder or associate and the majority of the members of the administration, management and supervisory bodies of the said branch have been appointed only as a consequence of exercising its rights of vote.

In other words, the existence of one such *group of companies* shall be rendered by the form of control, as exercised by one such company over another one.

Such groups of companies include independent enterprises from the legal perspective however which are closely connected between them by contributions and contractual relations.

The obligation as to accomplishing the consolidation shall fall under the duty of a private company, regardless of the form of property, as of the time the latter exercises, either directly or indirectly: - one exclusive control (over 50% of the rights of vote within the general meeting of the shareholders), or, one joint control *(* the power over one joint venture shall be exercised by virtue of the unanimous agreement of the participants sharing the control), or one significant influence over one or several companies (one company shall hold a significant number of votes, somewhere between 20 % - 50 % within the meeting of another company, having however only the power to participate, and not control as well).

2. Impact of group companies on the Romanian accounting system:

The thought and practice in terms of the Romanian accountancy has followed several stages in its formation: the years 1837-1900 have meant the appearance of the Romanian accounting literature; the years 1900-1947 have stood for the period of the appearance of the first accounting books in Romanian – translations of foreign authors; the ripening of the accounting thinking.

1908 has been a turning point, since it was then when it appeared the first issue of the General Magazine of Trade and Accountancy, followed by:

- the stage of socialist realism (1947-1990) which develops in the economic environment, as planned in a centralized manner and

- the current stage after 1990, when one aims, by several legislative measures, at the compatibilization of Romanian accounting practices with the international ones (particularly with the European ones).

In the market economies, the accounting dualism plays a dominant role, dividing the information users in: external and internal users of information in terms of the said enterprise, so that the financial accountancy is designed for third parties, and the management accountancy is designed for the management.

At a national level, the process of accounting normalization is of a public type, the accounting norms are drawn up by a state body, the institutional reform has also be present in the future as well, so as to be able to lead towards a mixed accounting normalization, as accomplished by an independent body.

From a tax and accounting perspective, Law no. 571/2003 regarding the Tax Code, as republished, with the latter's subsequent amendments and adjustments, Law no. 82 /1991 on accountancy, as republished, with the latter's subsequent amendments and adjustments, Order no. 3055/2009 on the accounting regulations for the approval of the accounting regulations, as compliant with the European directives, as amended by virtue of Order no. 2239/2011 for the approval of the simplified accounting system, shall hereby define and regulate the parent company, the affiliated persons.

The impact of such group companies on the Romanian accounting system comes in terms of the alignment of the Romanian accounting regulations with the European directives, out of the need for a certain convergence and uniformity in accountancy.

For instance, the 7th Directive of the European Economic Community (EEC) refers to consolidated financial standings, the consolidation of accounts being required in the case of the groups of companies and standing for an overall of techniques that enable the elaboration of unique documents of synthesis for one single group, treated as a sole entity.

Basically, the consolidation of accounts consists in replacing the equity interests that are present in the balance sheet of the consolidated company, with the share of the own equity of the issuing company, as held by the consolidated company, including the share of the result corresponding to any such equity interests.

One group of companies is tempted to optimize its tax regime, by localizing its maximum profit, by the commercial operations between the group companies, where the tax, as owed, is lower. Under such circumstances, the business ethics dictates that transactions and non – financial operations between group companies shall be made at the usual market price. British call it "business ethics", Romanian call it …improvising.

3. Corporate governance – an instrument for the enhancement of the performance of the private group of economic interest versus the budgetary one

The corporate governance principles relate, in particular, to the shareholders' rights, the fair treatment of shareholders, the role played by stakeholders in terms of the private company's business activity, the information, transparency, administration of the said company and the administrators' liability.

In Romania, the implementation within the private companies legislation, of the principles of corporate governance referred to joint stock companies (SC) that act on the capital market (Law no. 297/2004 on Capital Market, Government Emergency Ordinance no. 28/2008 for the amendment and adjustment of Law no. 273/2006 on local public finance).

For the accomplishment of the common requirements, as deriving out of the status of a member state of the European Union (acquis comunitare) and the establishment within the private companies' legislation of the corporate governance principles, one has passed the Law no. 441/2006 for the amendment and adjustment of Law no. 31/1990 on private entities. This latter law has been followed by the Government Emergency Ordinance no. 82/2007 and by Government Emergency Ordinance no. 52/2008, by which one has brought new amendments and adjustments to the law on private companies.[1]

The big economic operators – public enterprises – autonomous administrations and private companies, where the state holds some full or major contributions – stand for a significant segment of the national economy.

For the state companies efficiency (namely those public enterprises), the improvement of the latter's corporate governance shall stand for one objective undertaken by the Romanian Government, by the Letter of Intent addressed to the International Monetary Fund, as approved by the Government by the memorandum on the 7th of June 2011, as reviewed.

Thus, one has passed the Government Emergency Ordinance no. 109/2011 on public enterprises' corporate governance.

The state companies are private companies, subject to the privatization process, with the mentioning of the fact that in case of those autonomous administrations, which belong to strategic branches of the national economy (energetic, mining, oil and gas, post office, telecommunications, railway transport), the Government may decide on the companies, as resulted out of the transformation of the said autonomous administrations, in terms of whet here to keep the normative share of control, or to sell the majority pack to portfolio investors, - art. 34, paragraph(1) of Government Emergency Ordinance no. 88/1997 on privatization.

A *group of economic interest (GEI)* is a relatively new entity and very little practiced in the Romanian law, as acknowledged by virtue of the 5th Title of the Law no. 161/2003 on certain measures for the ensuring of transparency while exercising the public dignities, the public functions and in the business environment, the prevention and sanctioning of corruption, with the latter's subsequent amendments and adjustments.

The model according to which one has built this particular regulation is that of the similar institution from the French law. The purpose of establishing one *GEI* is that of facilitating, developing or improving the economic activity of the group members, there being forbidden any distribution of dividends among the group members.

The group (*GEI*) may gather together either private companies, in an exclusive manner, or companies and other forms of enterprise organization (including persons exercising liberal professions).

GEI may be established with or without a share capital. The organization and operation of one *GEI* are similar to the ones established under the law for general partnerships (GP), and subject to their object of activity, they may hold the capacity of a trader or not.

GEI is a profitable legal entity, a special form of a private company, which combines the characteristics of general partnerships(GP) with the ones of the civil society (is profit – based, it has a joint fund of financial assets or resources, association to risks). In particular, *GEI* may not distribute the profit to its members, the group being established in view of improving the economic performances of the latter's members and not for getting profit. The risk that is shared by the members refers only to losses and not to profit.

Conclusions

1. At present, in Romania, from a legal perspective, the *group companies* are not regulated, which means that, legally, each such private company shall be individually viewed as one entity. The *group of companies* has no legal personality of its own, consists of two or several companies that are theoretically autonomous, however subject in fact to one single economic and financial management. The group characteristic is rendered by the control, which may either sole or joint.

Such control may be exercised by the same administration (directorial control), or by the same majority shareholders (shareholding control).

In practice, there are two possibilities:

a) the company called head of the group or the parent company shall preserve an industrial or commercial activity, sometimes in connection with the business activities of other such companies, where it holds shares, as acknowledged under the name of branches;

b) the *parent company* is a holding company, whose assets consist only of securities and whose objective is represented by the management of this portfolio.

From an economic, financial – accounting perspective, although the groups of companies often include big companies, the group structure is also adopted by small and medium – size enterprises.

The economic reality in the recent years has rushed the re – grouping of priorities, the re – thinking of business, has led to alliances between companies so as to focus on the latter's maintenance on the market, has had as a consequence the increased preoccupation for the provision of liquidities in an attempt to consolidate the financial stability of one such economic entity.

Within this policy of growth and concentration, private companies have purchased equity interests, and in order to become as less as possible vulnerable and more and more efficient, companies have approached the concentration policy: - vertically: the integration of all stages of the production and distribution cycle, as related to one category of products; - and / or horizontally: the integration of distinct, complementary or similar activities.

As long as in Romania group companies shall not be legally regulated, the latter shall adjust to the legislation in force.

As long as state monopolistic structures make a selection on the market and the access of private companies shall be restricted by norms, regulations, minimum reserves, productivity shall remain law, it may not be managed, and taxation shall restrict consumption, the economic market shall become neither stronger, nor competitive.

2. From a fiscal perspective, in Romania one acknowledges the group of companies as being a sole group of taxable persons only in terms of the Value Added Tax (VAT), under certain circumstances, as regulated by the Tax Code corroborated with the norms. This latter group of taxable persons are independent from a legal point of view, however they are in some close relations one with the other one from an organizational perspective. One such taxable person may not be part but of one single group, and the option relating to the appurtenance to the tax group shall refer to a period of at least 2 years, in which period of time all taxable persons within the group shall apply the same fiscal principles.

From a financial – accounting perspective, the valid Romanian norms, as regulated by virtue of the Order no. 3055/2009, on accounting regulations, with the latter's subsequent amendments and adjustments, as compliant with the 7th Directive of the European Economic Community, shall sketch the form and substance of the consolidated annual financial standings, the drawing up rules, as well as rules for the approval, auditing and publishing of the latter.

If fiscally, the taxable persons within one group are under the obligation to apply the same tax principles, namely the economic entity is checked at an individual level, the financial accountancy treats the economic entity both individually as well as within the group, if it meets certain conditions in terms of form and substance. In other words, there is a general obligation to apply the consolidated financial standings, as applicable for the entity (*parent – company*), however there are also some exceptions from this obligation, which are stipulated within the norms 3055/2009.

The prevalence of the tax over the accounting interest makes the consolidated application of the annual financial standings be difficult for the group of small and medium – size companies, which are not under the obligation to apply the international accounting standards.

In the Romanian economic environment, one has created no such real conjectures for the latter's application at a large scale, since they require some complex information requirements, the training of professionals for the purpose of understanding and enforcing these standards.

3. In Romania, *corporate governance* applies to public enterprises and joint stock companies that act on the capital market.

For those public entities, *corporate governance* should act as an instrument of economic re – launch, for the economic operator's efficiency and for the increase of the latter's contribution to the improvement of the economy parameters and the balancing of the state budget, there being no appurtenances of any *group of* any *economic interest* whatsoever.

For those joint stock companies that are listed on the stock exchange, the *corporate governance* should act particularly for a fair treatment of shareholders.

The establishment of the *group of economic interest* aims to the development and economic improvement of the group members, so as to deal with the competition needs, not for getting profit; however the *budgetary* and quasi – fiscal deficits coerce the government to get finance from the banks, to the detriment of private economic entities.

Budgetary expenses make it impossible for the lowering of taxes, and when the latter however do drop, the lowering is compensated by the increase of duties and fees.

In the case of private economic entities that are part of one given group, the benefits of applying the *corporate governance* may be found in the application and compliance with the accounting policies versus the tax policies adjusted to the economic context where the group of entities carries out the latter's business activity, thus in this group of private entities the financial – accounting rules are well delimited from the tax rules which serve distinct purposes, have distinct objectives and rely on distinct principles.

The differences between the accounting results and the tax ones or between the methods, as applied within the process of getting these results, are essential elements of analysis within these private entities. These companies develop their own mechanisms of tax management for the purpose of minimizing the tax cost, by starting from this *corporate governance* principle.

The group benefits, as paid through inflation and deficits, in general, by an excessive politicization of fiscality shall be replaced by the dynamism of small businessmen, of the group of small and medium – size enterprises, since the market allots the resources and activates the human resource.

The difference of an economic level between the distinct regions in Romania is given by the degree of prosperity of small entrepreneurs, investors being attracted by big markets, where they may easily place their merchandise or where they may choose the labor force.

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