

SOME ASPECTS CONCERNING THE E-COMMERCE FISCAL IMPLICATIONS

Diana Cîrmaciu

University of Oradea, Faculty of Law

diana.cirmaciu@rdslink.ro

Abstract: *It is affirmed that the internet has the ability to become the new global electronic market – market where every economical “argument” between the great powers of the world will take place. The internet can represent the instrument for the integration in the global economy of the 21 century.*

The organizations must generate the adoption and use of the newest technology in business, to have access to information, at the level of the most recent achievements on a global level, about production, financing, technology and to use the new marketing, supplying and sales methods through modern devices, which guarantee the access to the global electronic market, aiming to reduce costs, to increase the profit and the competitiveness rate.

The decisional factors of the society must use any opportunity to create, improve and reform the judicial and fiscal frame regarding to the matter of electronic commerce, so that this way to assure the sustainable rhythm of the economic improvement.

Key words: *the juridical and fiscal frame, e-commerce*

In our days, the competition among online retailers has become more intensive. Therefore, more and more businesses are trying to gain competitive advantages by using e-commerce to interact with customers. Development of commerce over the Internet has been rapid. It has obvious advantages from a commercial point of view, both in the extent to which it can be automated and in the wide range of potential customers to which it gives easy access.

A lot of companies have moved their focuses from products and sales to customer oriented marketing and understanding that customers has become more important issue of marketing because of the hard condition of competition in the market place.

The electronic market represents that virtual platform – that “virtual place in a network” – where different brokers, suppliers, buyers can meet, in order to realize the change of information, to make some transactions, etc. We observe that the mechanism of the electronic market needs the interaction between classical elements (request, offer) and institutions with regulative functions and even judicial, economical consciousness (this way for example, the virtual request proves a great importance taking into consideration the transformations caused by it upon production).

The electronic market, respectively the commerce on internet determines a “revolution” of prices (we can talk even about a higher flexibility of prices), because the technology contributes to reduction of prices and the high-level competitiveness obliges the sellers to establish their prices so that the volume of sold could increase. We must admit the great importance of electronic commerce in the complex transformational process of the traditional economy and of the development of a “new economy”.

The electronic commerce is one of the most characteristic exhibition forms of the globalizing world. The spread of the internet had opened the door in front of some new methods of continuation of activities, which earlier were impossible to even think about. Among other things it made possible to sell the subject not taking into consideration its edition form.

Electronic commerce encompasses the following main areas:

➤ electronic networks change the paths used to transmit information in the context of traditional trade in goods and services. Rather than using traditional communication channels (providing information through catalogues and ordering by letter, telephone or fax), interaction between supplier and purchaser occurs via the Internet, while the goods and services are delivered

physically. This is expected to create a substantial potential for mail order business, mediation agencies and similar service-providers.

➤ computer programmes, and increasingly also music/ audio and pictures/videos, can be exchanged in digital form via the Internet, and downloaded to remote storage media. Conventional telecommunication medias such as telephone/fax, radio and television will increasingly be integrated into the Internet, and will be enlarged by new multimedia services, e.g. video conferences, Pay TV, music and video on-demand. New Internet-related products will be offered increasingly (for instance homepage designing). In so far, the whole distribution process is tied online as well as parts of the production process of the traditional economy. Another characteristic feature of such digital products is that they can be reproduced in unlimited numbers without loss of quality.

➤ the Internet offers a significant potential for services provided by financial intermediaries (electronic banking, trade in securities, electronic cash, insurance), for advisory services and consultants (auditors, management consultants, accountants, software programming, tele-medicine) and for transactions with public institutions.

There are some specific legal orders about the e-commerce (in our legislation as well in international legal system). We must mention the following legal rules:

➤ *in our country*: Law no. 365/2002 concerning e-commerce [published in Official Monitor no.483/2002.07.05 and re-published in Official Monitor no. 959/2006.11.29]; Ordinance of the Government no.130/2000 concerning legal regime of distance contracts [published in Official Monitor no.431/2000.09.02 and re-published in Official Monitor no. 177/2008.03.07]; Government Decision no. 1308/2002 for the application of Law no.365/2002 on e-commerce etc.

➤ *in EU-law* we mention: the Directive of the European Parliament and Council 2002/31 CE about some judicial aspects of the social services of information, especially that of the electronic commerce, on the internal market (directive about electronic commerce) establishes a constant judicial frame, subordinating the social services of information to the principles of the internal market (free traffic and establishment of freedom).

The member states must legitimate the obligatory character of the suppliers to make possible an easy, direct and permanent entrance for the users of the service and for the competent authorities at least regarding to the following information: the name of the service supplier; the geographical address where the supplier is established; the coordinates of the service supplier, even the electronic post address where the supplier can be quickly found; if the service supplier is registered to a commercial register or to a similar public register, the commercial register where the service supplier is registered and the registry number, or an equivalent registration code for identification; if the activity is an authorized one, the coordinates of the controlling authority. Further the state must assure that the suppliers which send un-required commercial communications through electronic post, consult regularly the “opt-out” [opt-out/ a key-term used in Directive - unsolicited transmission of commercial communications to a list of e-mail addresses of Internet users who have not given their explicit consent to receiving commercial messages but who have the option of withdrawing their name from the list. In this system, the consent of the Internet user is implicit] registers where those persons are registered which are not willing to get this kind of correspondence and they respect their choice.

The directive obliges the member states to eliminate any interdiction or restriction regarding to the use of electronic contacts. The member states watch that in case of misunderstandings between the service suppliers of the informational companies and the service users, the legislation won't restrain the use of the extrajudicial solution mechanisms in case of litigations, used by the internal law, even through the use of certain electronic devices. The directive foresees three types of derogation:

- some activities like notary activities or defensive activities in front of the justice;
- the clause of the original country is not applied for some special domains (e.g. authorship rights or contractual obligations related to contracts closed by consumers);

- the member states can adopt measures to limit the free traffic of services which originate from other member states for certain reasons, for example child protection, health or consumer protection.

In EU – law we mention also the Council Regulation (EC) No. 792/2002 amending temporarily Regulation (EEC) No 218/92 on administrative cooperation in the field of indirect taxation (VAT) as regards *additional measures* regarding electronic commerce.

Regarding the e-commerce taxation tendencies, along the years we could remark, that taxation – like politics – is the “art of possibilities”. The customs and other kind of taxation forms, which needed economical and physical control, during the years left place for the *ad valorem* taxation, based on the value-establishment and value-control, which were acted on the turnover. The fact, that the biggest part of the individuals considered this change a positive one, can be understand as the improvement of the administrative efficiency and as the partial acceptance of some aims in the domain of taxation politics. The biggest part of the taxation theories, as they were created for a world, where only the exchange of objects was possible, are not suitable for the world of information commerce transferred in an immaterial way. This is highly true in case of those norms which require the physical presence on the territory of the taxation administration, or in case of those, which make a difference between goods and services and are based on geographical emplacement. The same situation appears in case of the price-formational rules used between the companies.

We noted that Christopher Zimmermann [C.E. McLure Jr., G. Corabi, *L'imposizione fiscale sul commercio elettronico*, IPSOA Editore, 1999] wrote in „Taxing the Superhighway, State legislature”, in 1997 that: “Obviously the world of electronic commerce will be a challenge not only for the smaller traders, but even the basic theories of taxation must be renewed.” The same idea is shared by two co-workers of the OECD, who are asking the following: “Are the traditional taxation theories enough to deal with such complex transaction and with such a content, or these are shocked by this attempt? Do we need new frames for reference?”

From another point of view “the regulation, which from the point of view of fiscal politics would offer a long-lasting norm, from the point of view of the existing technology could be totally inadequate (e.g. the payment in electronic money without name, or the possibility of the deployment of a server wherever you want). The most important consequence in the domain of fiscal politics of the increase of the electronic commerce could be the fact, that in the 21 century the fiscal regulations will be “ruled” by technology instead of politics.”

This is not the only problem: politics wants to regulate a domain which is changing quickly. The Interactive Services Association Task Force remarked: “The ability of the States, that the taxation of an industry how and in what conditions is regulated, is restrained by the change of the nature of that industry. It is difficult to implement to the existing fiscal models, some new services, which were not taken into consideration when these models were created.” Because of these it has a basic importance, that by the use of any system, this must be so flexible, that it can be changed by the future developments.

We determine, that those similar products that satisfy the same needs must be taxed in the same way – within the taxation conditions of the electronic commerce “the idea of neutrality” is the most important.

However the principle of neutrality - described usually by the notion international tax neutrality is absent not only from the international relations between the fiscal mandatory organs, but it creates difficulties for certain national fiscal law systems. The difficulties created by the absence of this principle are doubled by the phenomenon of “virtual tax competition” (the deteriorative fiscal competition is caused by the active behaviour of the state, but the possible virtual tax competition between the states can be determined even by the passive behaviour). The state stays clear of the introduction of the fiscal regulation, and so it makes possible the formation of concurrence between the states even in the domain of taxation.

Some countries are behaving like a tax heaven, while other countries are increasing the taxes or aggravate the foreign currency controls. Usually it is because the absence of a suitable regulation

or because of the moral consciousness that a country does not qualifies it miscarriage, what is considered and qualified by the international community and by the separate law systems this way. Beginning with 1992 every international organization, from the UNO to the International Standard, from the G7 to the European Community, has started to edit some documents against the harmful tax competition, against money laundering and against tax resorts. The Fiscal Committee of the OECD on 20 January 1998 accepted the Harmful Tax Competition: An Emerging Global Issue report document, which was on 9. April 1998 by the Council of the OECD approved (since the Taxation Framework Conditions were agreed in 1998, the OECD, through its Committee on Fiscal Affairs -"Committee", has pursued an ambitious work programme directed at their effective implementation. A key element of that work programme has been an international dialogue, involving not only OECD member countries but also the international business community and a number of non-member economies).

We must analyze too, whether the subject of the electronic commerce could be attached to the harmful taxation activity and whether the wrong law practice or the lack of law creation determines the injury of neutrality or of the condition of the level playing field.

Near the general problems of the harmful tax competition, we must accentuate, that until this situation persists – until there is no norm-system for the electronic commerce which can be entirely used, and most of all because of that theories which declare that this sector needs fiscal incentive, even more than it is offered by the moratorium and by the vacation impostae – it exists the case of harmful tax practices, which means the concussion of the companies into this electronic commerce. Those ideas which are sustaining the fiscal incentive of the electronic commerce could create competitive situations between those who are offering greater preferences and those who even with the use of every existing instrument for law-creation, have no “talent” in law-creation, this way they are based on own regulations in the matter of e-commerce. This situation, instead of regulating the new phenomenon, makes impossible to realize the aim of fiscal neutrality, which would need instead of declarations, some concrete measures which can assure its realization.

Finally, we mention that the Internet is the most important achievement of the last century and it influences the development of e-business and, in particular, e-commerce, so, that is the reason because of there is a lot of work to do for e-commerce legislation.

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