

“Societas Europaea as a new form of enhancement the quality of business from the perspective of the application of tax optimization”

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Societas Europaea as a new form of enhancement the quality of business from the perspective of the application of tax optimization

Abstract

The paper deals with Societas Europaea as a form of business, which aims to facilitate the free movement of capital across the European Union and harmonize the legal standards of trading companies of individual European Union member states. The authors focus on main advantages of Societas Europaea, but also on the disadvantages and last but not least on the differences in comparison with other forms of business. The most important difference is that, the subject can choose the country for the residence of its Societas Europaea in any country of the EU member states, it means, it is transnational European equivalent of a public limited company. In the context of Societas Europaea as a form of business, the authors deal in this paper with the subject of income tax. By comparison of the corporate income tax rates and the amount of tax in Slovakia and other EU countries in the period 2010-2014, it is investigated, which of the EU countries is suitable for location of Societas Europaea in terms of tax optimization.

Keywords: Societas Europaea, tax optimization, corporate income tax, amount of tax, EU countries.

JEL Classification: F38, H21, H71, K34.

Introduction

Currently, when the business, fiscal, political and legal environment in the countries of European Union are changing, the European company – Societas Europaea (SE), as a legal form of business for some entrepreneurs is the right direction for their further development in business. SE as a legal form of business should primarily facilitate the free movement of capital across the EU and harmonize the legal standards of trading companies (Dvořák, 2005; Stričák & Meheš, 2012).

The status of the SE is determined mostly by the law of the state, where it has its residence. In the Slovak Republic it is regulated by Act no. 562/2004 Coll. about the Societas Europaea, which entered into force on the 9th September 2004. Act of the Societas Europaea brings Slovak law into a new form of internal organization of the trading companies known mainly from France and Italy. It is a monistic (unitary) organizational structure that recognizes only one administrative, management authority executing control and supervisory functions. This form of business differs from the previous commonly applied forms of business in several ways (Hodál & Alexander, 2005).

The most important difference is that the subject can choose the country for the residence of its Societas Europaea in any country of the EU member states. The European company is considered to be so-called

transnational European equivalent of a public limited company, which is registered in the Companies Register in their home country. The share capital must be at a minimum of 120 000 EUR. Amendment “SE” must be included in every Societas Europaea.

The primary advantage in comparison with the standard national form of business is the possibility for European company to move the residence across the EU without its liquidation. Change of residence means the withdrawal from domestic legislation.

European entrepreneurs choose this form of business because of the opportunities for tax optimization as well as for other benefits. The advantages of this form of entrepreneurship are:

- ◆ transnational character of SE;
- ◆ a standardized form of enterprise at European Union level;
- ◆ possibility to choose between dualistic and monistic management structure of the company;
- ◆ possibility of the free movement of capital across the EU and simplified cross-border mergers within the EU;
- ◆ possibility to relocate the residence between EU countries;
- ◆ creating pressure on states to improve their business environment.

Trading company with attribute SE is able to save costs on administration and management, while there is a possibility to choose a so-called monistic management system, in which the company is managed by a statutory body – the Governing Board (Hajduova, 2014). For comparison, a standard joint-stock company is obligated to have the Board of Directors and the Supervisory Board.

SE form has also some disadvantages, which include:

- ◆ impossibility of the establishment by natural persons, but legal persons only;

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- ◆ the amount of capital;
- ◆ the mandatory participation of employees in the company's management;
- ◆ the conditions for the establishment of a European company;
- ◆ a complicated and lengthy process for the establishment of the company.

Business register of the Slovak Republic records 94 companies of the SE type up to 1st June 2014. Compared to the thousands of companies of the Ltd. and Plc. type, this number is disproportionately lower. European companies registered in Slovak Republic undertake in such segments as construction, business consulting, and engineering and health services.

1. Tax optimization by business in the Societas Europaea

In the context of Societas Europaea as a form of business, this article deals with the subject of income tax. By comparison of the corporate income tax rates and the amount of tax in Slovakia and other EU countries in the period 2010-2014, we investigated which of the EU countries is suitable for location of Societas Europaea in terms of tax optimization.

For comparison, the following table shows the amount of the rates of income tax in individual countries over the analyzed period 2010-2014.

Table 1. The corporate income tax rate in EU in %

	2010	2011	2012	2013	2014
BE	34	34	34	34	34
BG	10	10	10	10	10
CZ	19	19	19	19	19
DK	25	25	25	25	25
DE	29.8	29.8	29.8	29.8	29.8
EE	21	21	21	21	21
IE	12.5	12.5	12.5	12.5	12.5
EL	24	20	20	26	26
ES	30	30	30	30	30
FR	34.4	34.4	36.1	36.1	36.1
IT	31.4	31.4	31.4	27.5	27.5
CY	10	10	10	12.5	12.5
LV	15	15	15	15	15
LT	15	15	15	15	15
LU	28.6	28.8	28.8	29.2	29.2
HU	20.6	20.6	20.6	20.6	20.6
MT	35	35	35	35	35
NL	25.5	25	25	25	25
AT	25	25	25	25	25
PL	19	19	19	19	19
PT	29	29	31.5	31.5	31.5
RO	16	16	16	16	16
SI	20	20	18	17	17
FI	26	26	24.5	24.5	24.5
SE	26.3	26.3	26.3	22	22
UK	28	26	24	23	23
SR	19	19	19	23	22

Source: Processed by authors.

During the analyzed period 2010-2014, the lowest tax rate was registered in Bulgaria and Cyprus, at the level of 10-12.5%. The highest tax rate of 36.1% was recorded in France in 2012-2014 and 35% in Malta throughout the period.

From the data of the selected company's accounts, we compared the amount of tax paid during the

years 2010-2014 in Slovakia with the amount of the tax paid in each European Union country. The basis for the calculation is economic result before taxation of the selected company, for each year.

The following table shows economic result before tax for the period, the amount of tax calculated at the Slovak Republic and the economic result after tax.

Table 2. Development of income taxes in selected company in the Slovak Republic for the time period

	2010	2011	2012	2013	2014
Economic result before tax	5 222 396	6 528 684	6 452 182	5 486 906	6 486 457
Income tax	1 024 088	1 393 288	1 277 662	1 079 608	2 039 010
Economic result after tax	4 198 308	5 135 396	5 174 520	4 407 298	4 447 447

Source: Balance sheet of company for the period.

As table 2 shows, tax of selected company in the Slovak Republic ranged from 1 100 000 EUR to 2 100 000 EUR. The lowest tax was paid by the company in 2010, forming the value of 1 024 088 EUR. The tax liability was unstable over the next years. In 2011 and 2014 an increase in the amount of tax compared with the previous year has been recorded. In 2012 and 2013 tax decreased in comparison with 2011. The highest tax was paid by the company in 2014, namely at the value of 2 039 010 EUR.

We quantified the likely tax liability of the selected company in another member State of the European Union, from economic result before tax of the selected company in each year specified in table 2 and from the national tax rates for the reference years set out in table 1.

The table below shows the amount of tax for the analyzed period 2010-2014 in various European Union countries, where the residence of Societas Europaea could be located.

Table 3. The amount of tax rounded to no decimal places in EUR

	2010	2011	2012	2013	2014	Súčet
BE	1 775 615	2 219 753	2 193 742	1 865 548	2 205 395	10 260 053
BG	522 240	652 868	645 218	548 691	648 646	3 017 663
CZ	992 552	1 204 450	1 225 915	1 042 512	1 232 427	5 697 856
DK	1 305 599	1 632 171	1 613 046	1 371 727	1 621 613	7 544 156
DE	1 556 274	1 945 548	1 922 750	1 635 098	1 932 964	8 992 634
EE	1 096 703	1 371 024	1 354 958	1 152 250	1 362 156	6 337 091
IE	652 800	816 086	806 523	685 863	810 806	3 772 078
EL	1 253 375	1 305 737	1 290 436	1 426 596	1 686 479	6 962 623
ES	1 566 719	1 958 605	1 935 655	1 646 072	1 945 937	9 052 988
FR	1 796 504	2 245 867	2 329 237	1 980 773	2 341 611	10 693 992
IT	1 639 832	2 050 007	2 025 985	1 508 899	1 783 776	9 008 499
CY	522 240	652 868	645 218	685 863	810 807	3 316 996
LV	783 359	979 303	967 827	823 036	972 969	4 526 494
LT	783 359	979 303	967 827	823 036	972 969	4 526 494
LU	1 493 605	1 880 261	1 858 228	1 602 177	1 894 045	8 728 316
HU	1 075 814	1 344 909	1 329 149	1 130 303	1 336 210	6 216 385
MT	1 827 839	2 285 039	2 258 264	1 920 417	2 270 260	10 561 819
NL	1 331 711	1 632 171	1 613 046	1 371 727	1 621 614	7 570 269
AT	1 305 598	1 632 171	1 613 046	1 371 727	1 621 614	7 544 156
PL	992 255	1 240 450	1 225 915	1 042 512	1 232 427	5 733 559
PT	1 514 495	1 893 318	2 032 437	1 728 375	2 043 234	9 211 859
RO	835 583	1 044 589	1 032 349	877 905	1 037 834	4 828 260
SI	1 044 479	1 305 737	1 161 393	932 774	1 102 698	5 547 081
FI	1 357 823	1 697 458	1 508 785	1 344 292	1 589 182	7 497 540
SE	1 462 271	1 717 044	1 696 924	1 207 119	1 427 021	7 510 379
UK	1 462 271	1 697 468	1 548 524	1 261 988	1 491 885	7 462 136
SR	1 024 088	1 393 288	1 277 662	1 079 608	2 039 010	6 813 656

Source: Processed by authors.

According to the observed results in Table 3, the lowest tax liability would be in the selected company in Bulgaria and Cyprus, because the tax rate is the lowest in these countries.

Amount of taxes for the years 2010-2014 range from 3 100 000 EUR to 10 700 000 EUR. In Slovakia,

the company would pay 6 813 656 EUR for all taxes in this time range. As seen from Table 4, during the whole analyzed period, the company in France would have to pay the highest tax, where the tax reached 10 693 992 EUR. The lowest tax would be in Cyprus at 3 316 996 EUR and Bulgaria at 3 017 663 EUR. The difference between the highest

and the lowest amount paid in taxes is 7 676 329 EUR. In Malta and Belgium we would pay more than 10 million EUR for taxes. Ireland, with the sum of 3 772 078 EUR, ranks to the countries with the lowest tax liability.

The following table 4 shows the sum of taxes in the various member states of the European Union for the period 2010-2014 compared with the level of tax of the selected company in the Slovak Republic for the same time period by quantifying the numeric difference.

Table 4. Tax comparison between the Slovak Republic and the EU countries

	The sum of tax in the EU countries for the period 2010-2014	The sum of tax of the selected company in the Slovak Republic for the period 2010-2014	Difference
BE	10 260 053	6 813 656	-3 446 397
BG	3 017 663	6 813 656	3 795 993
CZ	5 697 856	6 813 656	1 115 800
DK	7 544 156	6 813 656	-730 500
DE	8 992 634	6 813 656	-2 178 978
EE	6 337 091	6 813 656	476 565
IE	3 772 078	6 813 656	3 041 578
EL	6 962 623	6 813 656	-148 967
ES	9 052 988	6 813 656	-2 239 332
FR	10 693 992	6 813 656	-3 880 336
IT	9 008 499	6 813 656	-2 194 843
CY	3 316 996	6 813 656	3 496 660
LV	4 526 494	6 813 656	2 287 162
LT	4 526 494	6 813 656	2 287 162
LU	8 728 316	6 813 656	-1 914 660
HU	6 216 385	6 813 656	597 271
MT	10 561 819	6 813 656	-3 748 163
NL	7 570 269	6 813 656	-756 613
AT	7 544 156	6 813 656	-730 500
PL	5 733 559	6 813 656	1 080 097
PT	9 211 859	6 813 656	-2 398 203
RO	4 828 260	6 813 656	1 985 396
SI	5 547 081	6 813 656	1 266 575
FI	7 497 540	6 813 656	-683 884
SE	7 510 379	6 813 656	-696 723
UK	7 462 136	6 813 656	-648 480

Source: Processed by authors.

The largest positive difference in tax paid is in countries Cyprus and Bulgaria. In these two member states, the selected company would save 3 795 993 EUR on taxes in 2010-2014, compared to the tax paid in Slovakia for the same period of time. In Ireland, it would be a sum of 3 041 578 EUR. More than 2 millions EUR would be saved by a company in Latvia, and more than one million EUR in Poland, Romania and Lithuania.

Figure 1 (see Appendix) shows the amount of tax across the EU countries during the analyzed period of time. France, Malta and Belgium belong to the countries with the highest tax burden. The optimal countries for the location of the Societas Europaea are mainly Bulgaria, Cyprus and Ireland.

Conclusion

Currently some opinions occur, claiming that even though the Societas Europaea as a legal form brings several benefits, it doesn't bring sufficiently clear and tangible benefits for businesses and also doesn't simplify entrepreneurship in the EU in comparison with other legal forms.

From a tax perspective, the benefit of the Societas Europaea is considered to be the possibility to choose the country, where SE will have its registered residence, in order to use the most suitable tax system within the EU. SE is subjected to the tax laws of the member state, in which it is located. So it can benefit from a low tax burden, for example in Cyprus or Bulgaria, but can also use the indirect tax

benefits (such as holding arrangements applicable in the Netherlands). By the transfer of the registered office of an SE the company itself may solve the optimization of the taxation of business transactions carried out within the framework of its business, such as taxation of the sale of receivables or sale of shares. In a case when a *Societas Europaea* has its residence in one state, but permanent establishment in another state, it must pay the income tax in the country of its residence, as well as in the state, where it has its permanent establishment.

Commonly used legal entities of Ltd. or even Plc. type, don't have possibility to resettle the entity as a whole neither within the EU, nor in other countries. It results in annulment of the company in Slovakia

and the opening of a new company abroad. However, relocation of the company is not a cheap affair feasible for everyday businessman.

The trader should start considering the *Societas Europaea* at a time, when the company reaches a certain size. This includes not only financial capacity, but also the number of employees, value of assets, or an international element in the business, which is one of the legislative conditions for the establishment of the *Societas Europaea*.

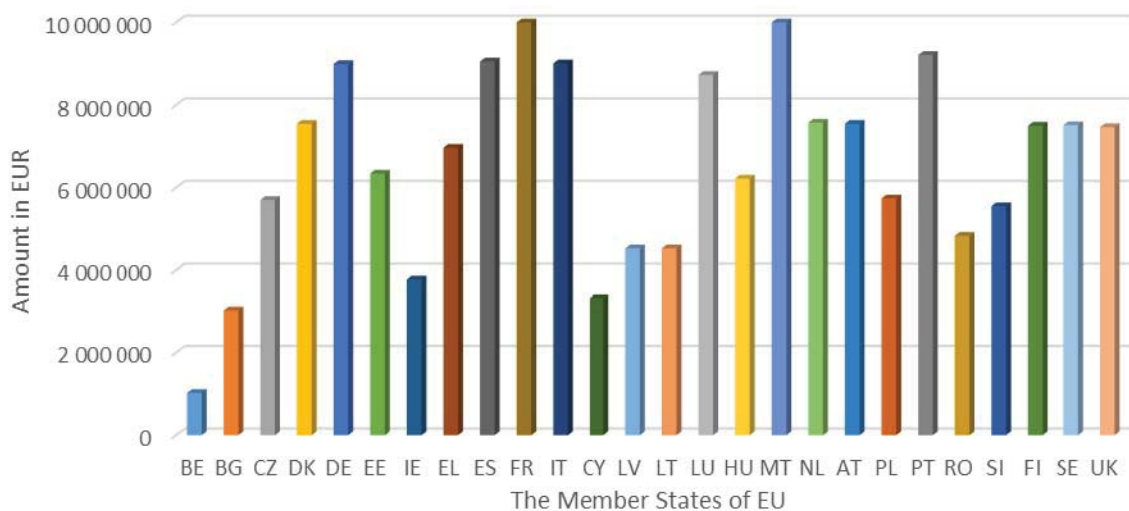
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Appendix



Source: Processed by authors.

Fig. 1. The total amount of taxes during the analyzed period