

# TAX PLANNING, VALUE ADDED TAX (VAT) OPTIMIZATION AND TAX CONTROL

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## Tax planning, value added tax (VAT) optimization and tax control

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### Abstract

Tax expense makes up a significant part of the company's total costs, which are directly related to the company's competitiveness on the market. Besides direct costs, tax burdens also create indirect costs because increasingly complex tax regulations demand specific and specialized knowledge as well as being familiar with them.

Research of existing Croatian practice through appropriate case studies will confirm the thesis that tax planning and optimization are finding ways to reduce tax payments, and at the same time have a role in achieving tax savings through various opportunities for tax relief and other savings. The obtained results show that ignorance and misapplication of legal regulations can lead to significant expenses in the form of penalties for committing a tax offense or even a possible criminal offense.

Therefore, entrepreneurs can achieve savings in paying taxes only if they correctly apply tax regulations through tax optimization and planning and at the same time, they can reduce the risk of reckless entry into the area of tax avoidance. It is, therefore, important to be well acquainted with the tax system and tax regulations, but also with the procedures and legal possibilities in the case of tax supervision, through which proper tax planning is controlled.

VAT optimization is a complex process and involves the use of various methods, approaches and strategies to achieve a useful result without ultimately looking like an attempt to avoid paying taxes. Knowledge of tax reliefs and exemptions enables efficient tax planning and facilitates the company's management to make optimal business decisions.

Tax revenues make up a significant part of state budget revenues, which makes the controlling in this area of tax planning and optimization frequent, thorough and comprehensive.

**Key words:** *tax planning, tax optimization, tax liabilities, VAT, tax supervision.*

## 1. INTRODUCTION

Taxpayers of the Republic of Croatia and other countries are taxpayers of various tax forms, and the aim of each taxpayer is to reduce their tax burden as painlessly as possible, while at the same time increasing their income, and all the while staying in compliance with legislation. Therefore, the thesis is that tax planning and optimization are finding ways to reduce tax payments, and at the same time have a role in achieving tax savings through various opportunities for tax relief, etc. The best way to confirm this thesis is through appropriate case studies from the best practice examples in Croatia. Thus, taxpayers can successfully use tax planning to achieve the set goal.

Value added tax is only one form of taxes to which taxpayers are subject given the level of its tax rate, it is clear that the goal and priority of taxpayers is how to reduce tax payments and how to optimize liabilities. Special attention in tax planning and optimization is focused on value added tax because it is the most generous tax in the Republic of Croatia, and the one avoided the most by taxpayers. On the other side the state bodies control, this tax the most as it is most susceptible to tax evasion.

## 2. TAX PLANNING

### 2.1 The concept of tax planning

The functioning and survival of modern states would not be possible without revenues, which finance public expenditures, and these revenues are collected through taxes. Among other things, coercion is something that characterizes taxes, which results in a negative attitude of taxpayers towards the fulfilment of these obligations<sup>1</sup>, “.... although most taxpayers are aware of the need to pay taxes for the common good, it does not always mean that they are happy to do it or wish to leave more money for themselves or the company out of personal interest.”<sup>2</sup>

Taxes are, therefore, duties forced upon the citizens and societies by the states, and they date back to the distant past. Even in ancient civilizations, there were various forms of levies, obligations that forced the population to give part of their goods or crops to the ruler. With the creation of strong states, they are increasingly relying on tax forms, and this also leads to resistance to paying tax. Tax planning therefore appears as resistance to the obligation to pay taxes, levies, and fees, in order to reduce these obligations. And it is therefore that the modern man resorts to rational thinking

<sup>1</sup> Jelčić B., Lončarić-Horvat O., Šimović J., Arbutina H. (2002), Financial Law and Financial Science, Official Gazette Zagreb, p. 189

<sup>2</sup> Jelčić B., Lončarić-Horvat O., Šimović J., Arbutina H. (2002), Financial Law and Financial Science, Official Gazette Zagreb, p. 189

and more detailed planning of how to achieve business goals with optimal tax performance, all the while staying within the legal framework.

However, taxation exists for the benefit of society as a whole and as members of society we all together gain certain benefits, these benefits are costly and the only way to afford them is through taxes.

Tax planning therefore allows taxpayers to harmonize their operations in order to reduce tax liabilities within the framework of tax regulations<sup>3</sup>. It is a process that involves the use of various tax exemptions, deductions and benefits to reduce the tax burden during the year. In order to achieve this, it is necessary to have a proper understanding of tax laws, but also their application in the right situation and in a correct manner.

Certainly, taxes can be a significant expense for financially successful companies, so tax planning is actually financial planning<sup>4</sup> because the goal is to reduce tax liabilities and make optimal use of benefits and advantages by applying favourable provisions of tax laws.

One of the advantages of such planning, in addition to the aforementioned reduction of tax liabilities, is that refunds can be directed to new investments, which ultimately helps the economic well-being and development<sup>5</sup>.

The basic tax forms in tax planning are: personal income tax, corporate income tax, real estate transfer tax and value added tax.

Thus, while being in compliance with the tax laws and regulations, tax planning uses tax exemptions, deductions, reliefs or refunds to be fully utilized or used in deferment or deferring liabilities for a later period. However, tax planning is not the same as evasion, i.e., avoidance to pay tax.

## 2.2 Tax avoidance and evasion

Avoiding paying taxes or tax evasion is one of the main factors that describe the behaviour of taxpayers<sup>6</sup> and arises as a result of resistance to tax liabilities<sup>7</sup>. Tax evasion is an illegal act or certain omission that avoids or conceals a tax liability<sup>8</sup>. This is undesirable behaviour for the state because it leads to a lack of revenue for the state

<sup>3</sup> Tomaš A. (2018), Tax Planning in the Field of Corporate Income Tax, University of Split, Faculty of Economics, Split <https://urn.nsk.hr/urn:nbr:hr:124:766691>

<sup>4</sup> <https://worldscholarshipforum.com/hr/bogastvo/planiranje/poreza>

<sup>5</sup> Ibid

<sup>6</sup> Nikolić N. (1999), The Foundation of Public Financing, Faculty of Economics Split, Split

<sup>7</sup> Tomaš A. (2018), Tax Planning in the Field of Corporate Income Tax, University of Split, Faculty of Economics, Split <https://urn.nsk.hr/urn:nbr:hr:124:766691>

<sup>8</sup> Mahović-Komljenović M. (2009), Computer Support and Tax Evasion – data manager role, Repertory of the Faculty of Economics in Zagreb, Zagreb, Vol. 7, no.1,

from tax collection in the amount of unpaid taxes, therefore there is a desire to minimize tax evasion or avoidance

There is a distinction between legal or permissible evasion, which is not in conflict with the law, and illegal or impermissible evasion, which entails sanctions.<sup>9</sup>

Legal tax evasion is not in conflict with the law and other regulations and may be the result of finding “holes” in the legislation due to possible opacity or due to ambiguities in the legislation and the tax system. In general, taxpayers want to use these anomalies or ambiguities or inconclusiveness in different ways to show their revenues as low as possible and their expenditures as high as possible, thus reducing the tax burden and ultimately paying less taxes to the state. Changing the place of seat of economic activity or residence for natural persons is also a form of legal tax evasion. Due to different tax benefits in the area of a particular territorial unit, lower tax rates in different cities or areas, taxpayers’ resort to the so-called tax escape. Increasing the tax burden on certain products in order to reduce their consumption or increase exports is also a form of legal tax evasion.

Illegal tax avoidance or tax evasion occurs when a taxpayer directly violates tax provisions and acts illegally while performing an economic activity. In the case of complete tax evasion, the taxpayer does not report any of the realized turnover, income or assets, which is certainly subject to taxation. In the case of partial tax evasion, the taxpayer submits incomplete, partial or false declarations or financial indicators of his turnover, income and property value in order to reduce the tax base and thus lower tax. It is certainly necessary to point out that tax evasion is a criminal offense.<sup>10</sup>

The difference between tax planning and tax evasion is, among other things, the fact whether the transaction under observation is real or simulated, or fictitious, which means that its ultimate purpose is solely to avoid paying taxes.<sup>11</sup> According to the General Tax Law<sup>12</sup>, Article 12, if a legal transaction is concealed by an apparent legal transaction, then the basis for determining the tax liability is a concealed legal transaction.

So, if there are two legal transactions and one of them serves only to conceal or to create a false impression, especially with the tax authorities, the basis for taxation is actually the other, concealed. Article 12a of the same Law describes the use of tax benefits contrary to the purpose of the law in such a way that a taxpayer who realizes tax benefits using the tax system through organizational forms that are taxable at lower prescribed rates, and which were not intended for a particular group of taxpayers, is

<sup>9</sup> Ibid

<sup>10</sup> Criminal Code, Official Gazette No. 110/97, 111/03, 71/06, Article 286.

<sup>11</sup> Kukić N.(2008), Introduction to Tax Planning – Basic Concepts and Sources of Law, RRIF No.12/2008, Zagreb, p. 200.

<sup>12</sup>General Tax Act, Official Gazette: 115/16, 106/18, 121/19, 32/20, 42/20 Zagreb



using tax benefits contrary to the purpose of law. The difference between tax planning, tax avoidance and evasion is shown in the following diagram: <sup>13</sup>

**Table 1** Difference between tax planning, tax avoidance and tax evasion

Illegal	Legal	
Tax evasion	Tax avoidance	tax planning
Tax fraud	fraus legis – doctrine of the abuse of law	minimal or no tax liability
tax liability and criminal liability	possible tax liability	there are no sanctions

**Source:** Kukić N. Introduction to Tax Planning – basic concepts and sources of law, RRIF no 12/2008

The right side of the diagram is an area that is not of interest to the tax authorities because it signifies completely legal tax evasion, for example giving up smoking hence avoiding the obligation to pay excise duty on tobacco products. Left side shows unacceptable behaviour and leads to tax liability and criminal responsibility. The most difficult part is in the middle: to define whether it is a matter of deferring tax liabilities or is the tax avoidance or tax evasion allowed.

### 2.3 International tax planning

International tax planning is a set of techniques of multinational companies that implement them to increase profits by reducing the tax burden.<sup>14</sup> When creating a tax strategy, multinational companies compare certain factors with companies in the same industry to design their own tax planning and select an appropriate tax strategy: as an allocation or relocation strategy and a strategy focused on home jurisdiction.<sup>15</sup>

A revenue transfer strategy is a form of legal tax avoidance that also brings long-term benefits to the company. In the strategy focusing on home jurisdiction, the concentration is hence on jurisdiction where the parent company has its headquarters.

To implement these strategies, certain techniques are used, such as:<sup>16</sup>

- techniques aimed at deferring tax payments or making temporary savings and aimed at permanent savings,
- actual and formal tax planning
- techniques for using / not using double taxation agreements

<sup>13</sup> Kukić N.(2008), Introduction to Tax Planning – Basic Concepts and Sources of Law, RRIF No.12/2008, Zagreb, p. 201.

<sup>14</sup> Kukić N. (2009), International Tax Planning – Techniques and Instruments, RRIF No. 4/09.Zagreb, p.125.

<sup>15</sup> Tomaš A.(2018), Tax Planning in the Domain of Corporate Income Tax, University of Split, Faculty of Economics, Split, available at: <https://urn.nsk.hr/urn:nbr:hr:124:766691> p. 8

<sup>16</sup> Ibid p. 9

### 3. VAT OPTIMIZATION

Tax planning is, as already mentioned, a method of reducing the tax burden and includes all available tools and resources that comply with legal provisions. The main goal of tax planning is to reduce the tax liability by using all favourable provisions in law such as deductions, exemptions, reliefs, rebates, etc. Therefore, tax optimization plays an important role because it enables significant savings in business operations and reduces the risk of illegal tax avoidance. Hence it is primarily important to know the tax system and certainly the legal provisions of each type of tax, depending on where the optimization is sought. Tax planning is carried out in direct and indirect taxes. An indirect form of taxation is value added tax (hereinafter VAT).

In order for optimization to give the best results, it is necessary to use several methods and strategies, and yet it should be borne in mind that everything is in accordance with legal provisions because the use of methods to optimize VAT is often subject to tax authorities' control, tax inspection. Optimization can be performed on a one-time basis for example, for one transaction or a shorter period (one accounting period), it can also be planned for a longer period or used every time when calculating and paying taxes (this implies good knowledge of tax exemptions, types of goods and services that are subjected to transaction, country where the business is conducted, etc.). VAT optimization methods may include using options, trading real estates, deposits, delaying invoicing or declaring the right to recognize pre-tax rights, establishing a subsidiary or several business units, etc. Before using any of the aforementioned methods, the company must first decide what are the goals of each chosen method and be well informed of the legal provisions, because many of the methods, a company may choose to apply, are subject to and penalized if they are not implemented within the allowed framework.

#### 3.1 VAT – basic concepts

With the accession of the Republic of Croatia to the European Union on the 1<sup>st</sup> of July 2013, the Value Added Tax Act was fully harmonized with the *acquis communautaire* in the field of value added tax taxation. This harmonization is related to the implementation of Council Directive 2006/112/EZ of the 28<sup>th</sup> of November 2006 on the common system of VAT, which entered into force on the 1<sup>st</sup> of January 2007, including all its amendments, the direct application of European Union Regulations and respecting the judgments of the European Court of Justice.

Value added tax is an indirect tax that the person who pays it transfers to another, the final consumer. It is regulated by the Value Added Tax Act<sup>17</sup> (hereinafter: the Act).

<sup>17</sup> Value Added Tax Act, Official Gazette number: 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, 121/19, 138/20

According to the Act, the taxpayer is any person who independently performs any economic activity, regardless of the purpose and result of performing the activity. Economic activity is any activity of a producer, trader or person performing services, including mining and agricultural activities and activities of free professions, exploitation of tangible or intangible assets for the purpose of permanent income generation. In addition to these “regular” taxpayers there are also “occasional” taxpayers who are considered to be any person who occasionally delivers new means of transport to a customer in another Member state.

The subject of VAT taxation is the supply of goods and services in the country for a fee, the import of goods and the acquisition of goods within the European Union that is performed in the country for a fee. Article 5 of the Value Added Tax Act stipulates what is not subject to VAT. The Act further stipulates a taxable event as an event on the basis of which the legal conditions necessary for the occurrence of the obligation to calculate VAT are met. It is important to point out accordingly that a taxable event is, among other things, the supply of goods or services, acquisition of goods within the European Union, import of goods, use of goods or services for purposes other than business and the like. VAT shall become chargeable when the tax authority, based on the VAT Act, has the right to claim VAT from the person who is obliged to pay it, even though the time of payment has been postponed.<sup>18</sup>

Another of the basic concepts provided by the Act is certainly the tax base. The tax base for the supply of goods and services is considered to be the fee that is all that the supplier has received or should receive from the buyer or another person for these supplies, including the amount of subsidies directly related to the price of delivered goods or services. The tax base includes the amount of taxes, duties, fees and similar levies, excluding VAT, also ancillary costs such as commissions, packaging, transport and insurance costs charged by the supplier of goods or services to the buyer or seller.<sup>19</sup>

The moment when the obligation to calculate deductible VAT arises is also the moment when the right to deduct VAT or input tax arises. The conditions under which a taxpayer may deduct input tax are determined by Articles 58, 59, 60, 61 and 62 of the Value Added Tax Act.

### 3.2 VAT exemptions as optimization elements

One of the areas that allows companies as taxpayers to plan for tax optimization are the exemptions applied by the states. As one of the approaches in the taxation of sales of certain products and services in the VAT system, where some of them are exempt for export (according to the principle of destination), because they are an important part of expenditure (e.g., food) or are good for the wider social community (education).

<sup>18</sup> Article 29 of the Value Added Tax Act, Official Gazette number: 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, 121/19, 138/20

<sup>19</sup> Ibid Article 33



Zero rates or exemptions are usually used for exclusion. Value Added Tax Act stipulates the exemptions described in Articles 39 to 56, which include:

- exemptions for certain activities of public interest,
- exemptions for other activities
- exemptions for transactions within the European Union,
- import exemptions
- export exemptions
- exemptions from the provisions of services on movable property
- exemptions in respect of international transport
- exemptions for certain deliveries equivalent to exports,
- exemptions for mediation services,
- exemptions for transactions relating to international trade

However, it should be borne in mind that when supplying certain goods and services that are exempt from VAT, the taxpayer is not entitled to deduct input tax, so input tax charged in the previous stage of turnover cannot be deducted. If the taxpayer makes partly exempt supplies and partly not exempt, he is entitled to deduct input tax only in the part relating to taxable supplies.

Value Added Tax Act also stipulates special taxation procedures. One of them is a special taxation procedure for small taxpayers prescribed in order to simplify and facilitate the fulfilment of their tax obligations. From the 1<sup>st</sup> of January 2018, the threshold for entry in the register of VAT payers is in the amount of HRK 300.000,00. Until the specified amount is exceeded, such taxpayer is exempt from VAT on supplies of goods and services but is not entitled to input tax. If a small taxpayer requests entry in the register of VAT payers, he is obliged to remain there for the next 3 years (Article 90 of the Value Added Tax Act). In practice, it often happens that some taxpayers abuse this institute precisely because they wish to avoid the payment of value added tax and the entry into the register of taxpayers, so instead of crossing the threshold the present company is closed down, and a new one is opened. This, of course, is in the category of illegal planning or abuse.

For taxpayers with a registered office, permanent business unit, residence or habitual residence in the country whose value of supplies of goods and services in the previous calendar year did not exceed HRK 15.000.000,00 excluding VAT, the procedure of taxation according to collected fees is provided.

This means that such a taxpayer can calculate and pay VAT on the basis of fees charged for the delivery. This procedure is not mandatory but is a matter of the taxpayer's choice. The obligation to calculate VAT under this procedure arises on the day of receipt of payment, while the taxpayer has the right to deduct input tax at the time when he has paid the invoice to the supplier (Article 125 of the Value Added Tax Act).

## 4. TAX INSPECTION

### 4.1 The concept of tax inspection

Tax inspection is part of the tax – legal relationship in which the Tax Administration and the Customs Administration, as well as other tax authorities carry out the procedure in order to verify and establish the facts relevant for the taxation of taxpayers and other persons.<sup>20</sup> Tax inspection is therefore a tax procedure in which the facts relevant to taxation are established.<sup>21</sup> It shall be carried out within three years from the beginning of the limitation period of the right to determine the tax liability, exceptionally in case of abuse of rights, in procedures for determining the difference between acquiring property and proven means for acquiring that property, procedures for combating tax fraud and procedures ordered by other bodies, when tax inspection may be performed for a period for which the right to determine the tax liability has not expired (six years).

### 4.2 The course of tax inspection

Tax inspection is carried out in order to protect the public (tax) interest, therefore it is prescribed that the tax authority has the right to subsequently verify the facts relevant to determining the tax liability that the taxpayer stated in the tax form. Verification of the stated data and determination of facts is carried out with the help of various means of evidence. What kind of means will be used and to what extent is the decision of the tax authority and the person conducting the tax procedure, guided by the basic principles of taxation prescribed by the General Tax Act and the General Administrative Procedure Act.<sup>22</sup> During the period of tax inspection, the taxpayer must provide access to all original documentation that is requested and is the subject of tax inspection, in order to properly establish the facts. In doing so, the tax inspector is obliged to establish all the facts that are important for making a lawful and correct decision, also taking into account those facts that are in favour of the taxpayer (Article 6 of the General Tax Act). Therefore, the obligation of the tax inspector, in addition to considering the facts that affect the increase in tax liability, is also to consider the facts that affect the reduction of tax liability. To determine all relevant facts for taxation, the tax inspector collects information, appoints experts, obtains documents, conducts inspections and uses other evidence to make a decision on the correctness of taxation in a lawful and proper manner. Although the duration of tax inspection is not legally prescribed, the efficiency and cost-effectiveness should be taken into account. In establishing the facts, the tax authority bears the burden of proof for the facts that establish the tax, while the taxpayer bears the burden of proof for the facts that reduce or abolish the tax (Article 88 of the General Tax Act). If during the implementation of the tax inspection, it is determined that in order to make the right decision it is necessary to obtain information

<sup>20</sup> General Tax Act, Official Gazette, number: 115/16, 106/18, 121/19, 32/20, 42/20 Zagreb

<sup>21</sup> Radusin Lipošinić M. (2018), Establishing Facts in the Procedure of Tax Inspection, RRIF No.11/2018. p. 124

<sup>22</sup> General Administrative Procedure Act, Official Gazette number: 47/09

from taxpayers from other EU Member States, it may be proposed to conduct comparative inspections. The implementation of comparative inspections in the Republic of Croatia is prescribed by Article 37 of the Administrative Cooperation in the Field of Taxation Act in which Directive 2011/16/EU (for direct taxes) and Council Regulation (EU) No. 904/2010 (for VAT) are implemented. The aim of comparative inspections is the exchange of information carried out by authorized officials of the competent authorities of the Member States participating in comparative inspections.<sup>23</sup>

Before completing the tax inspection or before compiling the record, the final interview is conducted with the taxpayer, on which an official note is drawn up. In the final interview, the taxpayer must be informed of all the facts established during the inspection, legal assessments and conclusion reached including their impact on the determination of the tax liability. Disputable matters should certainly be discussed. After that, a record is made and handed over to the taxpayer. The taxpayer has the right of filing a complaint in regard to the record. If the complaint contains new facts and evidence acceptable to the tax authority, an additional record shall be drawn up.

To the complaints that are not acceptable, the answer shall be included in the tax decision, which determines the taxpayer's obligation and orders payment. According to the given instruction on legal remedy, the taxpayer has the right to file an appeal against the tax decision. The appeal of the taxpayer can be accepted in the first instance, from the body that issued the tax decision or, if the allegations are not accepted, it is submitted to the second instance body for competent action. The appeal postpones the execution of the decision.<sup>24</sup>

## 5. EXAMPLES OF TAX PLANNING

### 5.1 Example of tax planning for which evasion has been determined

Taxpayer A d.o.o. is a company founded in the year 2000 and is engaged in construction and trade. It is a taxpayer of corporate income tax and value added tax as a monthly taxpayer. From the 1<sup>st</sup> of January 2015 the company becomes a taxpayer for the fees collected. Pre-bankruptcy settlement proceedings against debtor A d.o.o. opened in 2017. The company then establishes a new company B d.o.o. in June 2018 where the responsible person is the same as in the company A d.o.o.. Company A d.o.o. decides to sell real estate, a piece of land, in order to continue the construction activity through the new company (subsidiary B d.o.o.) since the company A d.o.o. got into financial trouble. Pursuant to the Article 40, paragraph 1, items j) and k) of the Value Added Tax Act, VAT is exempt on supplies of buildings or their parts and the land on which they are located, except for supplies before the first residence or use or deliveries with which from the first settlement or use did not take more than two years until the date of the next delivery, and the delivery of land, except for construction. Paragraph 4 of the same Article stipulates that the taxpayer has the right to choose the

<sup>23</sup> Radusin Lipošinić M. (2018), Establishing Facts in the Procedure of Tax Inspection, RRIF No.11/2018 p. 128.

<sup>24</sup> Tax Procedure, Tax Gazette, Tax Administration Gazette, special number 3a/2021, Institute for Public Finance

tax supplies referred to in the cited Article and items j) and k) provided that the buyer is a taxpayer entitled to deduct input tax in full on the basis of the supply to which the right of taxation wants to be applied. The right of choice for taxation and the right to deduct input tax may apply at the time of delivery.

Taxpayer company A d.o.o. decides to sell, with the VAT calculation, since the buyer B d.o.o. is a VAT taxpayer and has the right to deduct input tax, and the company A d.o.o. is liable for the fee charged. Company A d.o.o. and B d.o.o. enter into an Agreement on the purchase and sale of the real estate in question on the 1<sup>st</sup> of August 2018. Company A d.o.o. issues an invoice to B d.o.o. in the total amount of HRK 5.000.000,00, of which the tax base is HRK 4.000.000,00 and the calculated VAT is HRK 1.000.000,00 on the 1st of August 2018.

Taxpayer B d.o.o., upon receipt of the invoice, makes a record of it in the business books, and submits a tax return for the accounting period of August 2018. He also exercises the right to deduct input tax in the amount of HRK 1.000.000,00. At the same time, for the same tax period, the invoicing period of the company A d.o.o. does not show a VAT liability because according to the business books the payment of the real estate in question has not been made.

Tax inspection was conducted at company A d.o.o. with the following findings:

- Company A d.o.o. and B d.o.o. entered into an Agreement regarding the purchase and sale of real estate, where company A d.o.o. sells the real estate to the company B d.o.o., and upon the payment of the total price, the company B d.o.o. will be able to register in the land register as the owner of the real estate. The payment deadline is not specified in the contract.
- The Agreement for company A d.o.o. and B d.o.o. is signed by the same natural person, as the responsible person for both companies is one and the same.
- Company A d.o.o. issues an invoice to B d.o.o. showing the calculated VAT on the basis of HRK 4.000.000,00 in the amount of HRK 1.000.000,00.
- Company B d.o.o. exercises its right to deduct input tax on the submitted tax return and submits a request for its refund.
- Company A d.o.o., in its value added tax return form does not state the obligation per the issued invoice, stating that the real estate has not been paid and that it has no obligation to state VAT.
- In the process of tax inspection and collection of all facts relevant to taxation, the tax authority from the competent land registry department collects documentation according to which the company B d.o.o. based on the statement of the company A d.o.o. regarding payment, made a registration as the property owner.
- The companies have not registered the payment in their business books.
- Companies A d.o.o. and B d.o.o. are related in terms of the provisions of the General Tax Act.
- Company A d.o.o. has abused the system.

- To the company A d.o.o. a tax liability has been determined in the amount of the calculated VAT, which it did not declare or register.
- Against the company A d.o.o. and the responsible person in the same company an appropriate criminal complaint was filed.

## 5.2 Example of allowed tax planning <sup>25</sup>

Natural person C owns a building plot on which he would like to build a hotel and engage in a tourism activity. The land was acquired in 2016 at a price of HRK 5 million and today it is worth HRK 7 million, and the person has about 50% of the funds needed for construction. Person C can structure his business in several ways and choose the most favourable ones from the aspect of tax burden as well as other goals:

- 1)
  - Person C builds by himself on his own land
  - He registers in the register of taxpayers, he is also an income taxpayer and is obliged to keep business books.
  - After the completion of the building, he registers it into his business property.
  - He is not registered as a VAT payer, so his construction is 25% more expensive because he is not entitled to deduct input tax.
  - He is burdened with income tax, related contributions, monthly advances.
  - If his receipts are higher than HRK 300.000,00 he enters the system of VAT payers. He will then have to calculate VAT, but he will also be able to deduct input tax at the rate of 25% and charge at the rate of 13% - positive effect.
- 2)
  - Person C builds on his own land
  - He registers as a VAT payer and is a taxpayer of income tax from self-employment, he can deduct input tax during construction.
  - He can choose option of taxing a natural person with corporate income tax, tax rate 10% up to HRK 7.5 million of income.
- 3)
  - Person C establishes a limited liability company.
  - Registers as a VAT payer.
  - Person C sells his land to the company, the company pays real estate transfer tax, real estate in the company's assets, depreciation expense.
  - Construction with VAT but with the possibility of deducting input tax
  - Deliveries are taxable at the 13% rate, and input VAT at the 25% rate.
- 4)
  - Person C enters his land in the company's capital: the cost of the assessment but no real estate transfer tax.
  - Profitability: in the ratio of investment costs with real estate transfer tax.
  - No outflow of money to buy real estate.
  - The rest is the same as previous option.

<sup>25</sup> <https://slidetodoc.com/pw-c-hrvatska-porezno-planiranje-primjer-iz-prakse>



An overview of several possible options for starting a business in a specific situation is given. Among the offered or new options, the taxpayer should calculate which of the options is the most favourable or the most cost-effective.

## 6. CONCLUSION

Large fiscal and parafiscal levies make it difficult for Croatian entrepreneurs to compete on the market. Some entrepreneurs resort to activities that do not comply with legal provisions and enter the area of tax evasion for which they are often prosecuted. The conducted research confirmed the thesis that tax planning and optimization of value added tax enable entrepreneurs legal tax savings, whereby such funds can usefully be used in their business.

It should also be pointed out that planning implies a good knowledge of tax regulations in order to achieve optimization in taxation with the given funds and the application of appropriate strategies. In order to protect and secure its tax revenues, the state conducts detailed controls and inspections of taxpayers' operations, most often in value added tax. Therefore, tax planning pays off, but must be based on research and knowledge of legislation, reliefs, exemptions as well as appropriate methods, techniques and strategies to reduce tax liability but within the legal framework.

In general, tax planning should achieve a reduction in the tax burden of multinational companies in which regulators of international tax law play a significant role, but also a comparison of the tax planning process, all with the aim of tax avoidance and tax evasion. Also, tax planning and tax avoidance require complete and up-to-date knowledge of tax laws.

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