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UPRAVLJANJE PORESKIM RIZIKOM U MULTINACIONALNIM BANKAMA: POGLED IZ SRBIJE

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Rezime: S obzirom na značajnu različitost nacionalnih poreskih sistema između država, multinacionalne banke se suočavaju sa izazovom obezbeđenja usklađenosti sa poreskom regulativom u svakoj državi. S tim u vezi, multinacionalne banke teže da minimiziraju izloženost poreskom riziku, odnosno verovatnoću da će nacionalne poreske vlasti određeni poreski tretman proglasiti ilegalnim. U radu su ispitani osnovni izvori poreskog rizika u filijalama multinacionalnih banaka u Srbiji. Ukazano je na to da se banke suočavaju sa značajnim izazovima obezbeđenja usklađenosti sa poreskom regulativom, a posebno regulativom poreza na dodatu vrednost i poreza na dobitak. U radu je pokazano i da filijale multinacionalnih banaka u Srbiji i okolnim državama izuzetno skromno obelodanjuju informacije o poreskom riziku u napomenama uz finansijske izveštaje. Takođe, multinacionalne banke na različit način obelodanjuju informacije o poreskom riziku u različitim državama, što ukazuje na to da obelodanjivanja prilagođavaju procenjenom stepenu poreskog rizika u svakoj državi.

Ključne reči: poreski rizik, upravljanje rizikom, banke, multinacionalne kompanije, poreska regulativa.

JEL klasifikacija: G21, H25, H26, F23, K34, G32

Uvod

Iako je nakon velikih korporativnih skandala početkom XXI veka ukazano na potrebu unapređenja sistema upravljanja rizikom i internih kontrola, poreski rizik je jedna od oblasti upravljanja rizikom koja se često marginalizuje (Wunder, 2009). Poreski rizik se obično posmatra u kontekstu nesigurnih poreskih ishoda (Neuman i saradnici, 2020), odnosno ishoda poreskih kontrola, u smislu da je nekada teško sa potpunom sigurnošću odrediti poreski tretman transakcije. Tome doprinosi kompleksnost poreske regulative (Hoppe i saradnici, 2023), ali i nemogućnost poreske regulative da unapred jasno propiše poreski tretman svake moguće transakcije, usled velike raznovrsnosti poslovnih transakcija.

Poreski rizik u bankama često je posledica težnji vlasnika i menadžmenta banke za umanjnjem poreskog opterećenja. S jedne strane, poreska odeljenja banaka imaju zadatak da obezbede usklađenost sa poreskom regulativom, što neretko vodi većem poreskom opterećenju, ali, s druge strane, imaju zadatak i da vrše optimizaciju poreskog opterećenja u pravcu njegovog smanjenja (Hogsden, 2018). S tim u vezi, banke primenjuju strategije poreskog planiranja, kojima se koriste zakonom dozvoljeni poreski podsticaji i koje ne povećavaju značajnije poreski rizik banke. Ipak, banke mogu primenjivati i strategije izbegavanja poreza, kojima se koriste nesavršenosti poreskih zakona i koje mogu u značajnoj meri povećati izloženost banke poreskom riziku (Merks, 2006).

U cilju adekvatnog upravljanja rizikom, većina multinacionalnih banaka ima oformljena poreska odeljenja u okviru filijala u državama u kojima posluje. S tim u vezi, rukovodioci internih poreskih odeljenja neretko podnose značajan deo poreskog rizika kompanije (Wunder, 2009). Između ostalog, poreska odeljenja smanjuju pritisak na menadžment banke, koji dolazi od strane nacionalnih poreskih vlasti, ali i od strane javnosti (Bruhne i Schanz, 2022).

Predmet rada jeste upravljanje poreskim rizikom multinacionalnih banaka, shvaćeno kao skup aktivnosti usmerenih ka minimiziranju izloženosti poreskom riziku, odnosno minimiziranju verovatnoće da će nacionalne poreske vlasti određeni poreski tretman proglasiti ilegalnim. U vezi sa upravljanjem poreskim rizikom, moguće je identifikovati dva osnovna cilja rada. Prvi je analiziranje glavnih izvora poreskog rizika banaka, dok je drugi ispitivanje stepena u kojem banke vrše obelodanjivanja o poreskom riziku u napomenama uz finansijske izveštaje.

Istraživanje o poreskom riziku u multinacionalnim bankama može biti od koristi brojnim interesnim grupama. Identifikovanje glavnih izvora poreskog rizika, analiza mogućnosti za upravljanje poreskim rizikom i načini obelodanjivanja o poreskom riziku mogu biti od koristi zaposlenima u bankama u Srbiji – menadžmentu banaka, ali i zaposlenima u poreskim i komplajans odeljenjima i računovodstvu banaka.

Rad doprinosi nizu postojećih istraživanja o multinacionalnim bankama. Istraživanja o filijalama multinacionalnih banaka su posebno važna za tranzicione države, uključujući Srbiju, s obzirom na to da bankarskim sektorima ovih država dominiraju multinacionalne banke. Prema najboljim saznanjima autora, ovo je prvo istraživanje o upravljanju poreskim rizikom u filijalama multinacionalnih banaka u Srbiji.

Izuzev uvoda i zaključka, rad je sačinjen iz tri celine. U prvom delu rada je dat pregled literature o poreskom riziku u multinacionalnim bankama. U drugom delu rada su analizirani glavni izvori poreskog rizika u bankarskom sektoru Srbije, dok je u trećem delu rada sprovedeno empirijsko istraživanje o obelodanjivanju o poreskom riziku filijala multinacionalnih banaka u Srbiji i zemljama okruženja.

Pregled literature

U svim državama banke se suočavaju sa određenim stepenom poreskog rizika, primarno usled kompleksne poreske regulative, odnosno potencijalno različite interpretacije poreske regulative između nacionalnih poreskih vlasti i menadžmenta banke. Artemenko i saradnici (2017) identifikuju različite izvore poreskog rizika. Imajući u vidu da moraju da obezbede usklađenost sa poreskom regulativom velikog broja država, multinacionalne banke se nalaze u znatno težoj poziciji u odnosu na domaće banke (koje posluju u jednoj državi). Ovo važi za sve dobro poznate poreske oblike, a primarno porez na dodatu vrednost (PDV) i porez na dobitak.

Usled značajnih razlika između nacionalnih poreskih sistema, multinacionalne kompanije se u svakoj državi suočavaju sa specifičnim izazovima u vezi sa PDV-om (Xu i saradnici, 2018). U kontekstu banaka, u većini država važe specifična pravila vezana za PDV. Zapravo, većina finansijskih usluga koje pružaju banke je u najvećem broju država oslobođena PDV-a (Poddar i English, 1997), pa se banke suočavaju sa izazovom razdvajanja usluga na one koje su oporezive PDV-om i one koje nisu, ostvarivanja prava na korišćenje prethodnog PDV-a i slično.

Multinacionalne banke se suočavaju i sa značajnom disharmonijom po pitanju ostalih poreskih oblika, poput poreza na dobitak ili poreza na dohodak građana. Primera radi, u kontekstu poreza na dobitak, različite države primenjuju različita pravila za utvrđivanje oporezive osnovice, različite poreske stope i poreske podsticaje. Iako je u Evropskoj uniji bilo predloga da se pravila za utvrđivanje oporezive osnovice harmonizuju (Munin, 2011), kroz CCTB (engl. Common Corporate Tax Base) projekat, značajniji pomak još uvek nije ostvaren. Cnossen (2018) primećuje da bi ovakva harmonizacija dovela do smanjenja troškova usklađivanja sa poreskom regulativom za kompanije.

Kao rezultat značajne izloženosti poreskom riziku, multinacionalne kompanije upravljaju ovom vrstom rizika, i to u okviru specijalizovanih poreskih odeljenja unutar kompanije, ali i angažovanjem eksternih poreskih konsultanata. U vezi sa specijalizovanim poreskim odeljenjima unutar kompanije, Mulligan i Oats (2016) primećuju da su gotovo sve multinacionalne kompanije u poslednjih nekoliko decenija uključile specijalizovana poreska odeljenja u svoje organizacione strukture.

Multinacionalne banke obično imaju komplajans odeljenja, zadužena za obezbeđenje usklađenosti poslovanja banke sa regulativom, ali i zasebna poreska odeljenja. Izuzev minimiziranja izloženosti poreskom riziku i obezbeđenja usklađenosti sa poreskom regulativom, Crocker i Slemrod (2005) primećuju da se fokus ovakvih odeljenja stavlja i na aktivno upravljanje poreskim obavezama u cilju njihovog minimiziranja. Kako društvo način upravljanja porezima može posmatrati u kontekstu društveno (ne) odgovornog poslovanja (Dowling, 2014), Hogsden (2018) smatra da specijalizovana poreska odeljenja unutar preduzeća razvijaju strategije upravljanja porezima kojima se obezbeđuje usklađenost sa poreskim propisima, minimizira poresko opterećenje i eliminišu negativne reakcije javnosti.

Menadžeri specijalizovanih poreskih odeljenja unutar multinacionalnih kompanija se često nalaze u izazovnoj poziciji, s obzirom na to da moraju balansirati između minimiziranja poreskog rizika (što neretko podrazumeva sigurne i skuplje poreske strategije) i minimiziranja poreskog opterećenja (što neretko podrazumeva rizične, ali troškovno efikasnije poreske strategije). S tim u vezi, Robinson i saradnici (2010) pokazuju da se specijalizovana poreska odeljenja obično organizuju kao profitni centri, a ne centri troškova, što ukazuje na očekivanja vlasnika i menadžmenta kompanija da ovakva odeljenja učestvuju u smanjenju poreskog opterećenja i povećanju profitabilnosti kompanije.

Prisutni su, takođe nalazi, po kojima se performanse specijalizovanih poreskih odeljenja obično mere poreskim opterećenjem kompanije (Douglas i saradnici, 1996), odnosno nalazi o negativnoj povezanosti između naknade menadžerima ovakvih odeljenja i poreskog opterećenja kompanije (Armstrong i saradnici, 2012).

S druge strane, u sličnoj poziciji se mogu naći i eksterni poreski konsultanti. Od njih se očekuje da obezbede multinacionalnim kompanijama usklađenost poslovanja sa poreskom regulativom. Ipak, Hogan i Noga (2015) primećuju da angažovanje eksternih poreskih konsultanata obično dovodi do značajnog smanjenja poreskog opterećenja kompanije. Primera radi, eksterni poreski konsultanti mogu biti bolje upoznati sa poreskim podsticajima u državama u kojima multinacionalna kompanija posluje. Dodatno, objektivnije mogu izvršiti analizu poreskih posledica transfernih cena između povezanih preduzeća. Eksterni poreski konsultanti mogu, takođe, bolje tumačiti ugovore o izbegavanju dvostrukog oporezivanja kako bi multinacionalne kompanije izbegle plaćanje poreza po odbitku na transakcije između povezanih pravnih lica.

Sikka (2015) navodi da se kao eksterni poreski konsultanti obično angažuju računovodstvene kompanije koje pripadaju Big 4 grupi – Deloitte, EY, KPMG i PwC. S druge strane, multinacionalne kompanije nekada angažuju lokalne konsultantske kompanije u zemlji odredišta, s obzirom na to ovakve firme imaju uži fokus i ekspertizu za poreski sistem samo jedne države.

Značajan deo poreskog rizika multinacionalnih banaka potiče iz odnosa entitetima u poreskim rajeovima – postojanja entiteta iz poreskog raja u vlasničkoj strukturi banke i transakcija sa rezidentima poreskih rajeova. Merz i Overesch (2016) primećuju da su banke sa međunarodnim prisustvom u mogućnosti da značajan deo dobitka usmere u poreske rajeve u cilju umanjenja poreskog opterećenja na globalnom nivou. S druge strane, prisustvo kompanije u poreskim rajeovima i transakcije sa povezanim entitetima u poreskim rajeovima značajno povećavaju verovatnoću naknadnih poreskih plaćanja prema državnim poreskim vlastima (Taylor i saradnici, 2018).

U vezi sa prisustvom multinacionalnih banaka u poreskim rajeovima, važno je pomenuti da banke mogu koristiti ne samo tradicionalne poreske rajeve (na primer udaljena egzotična ostrva), već i brojne poreske rajeve unutar evropskog kontinenta (Rusina, 2020). Tako je značajan broj evropskih banaka registrovan u Holandiji ili Luksemburgu – državama koje su članice Evropske unije, ali i poznati poreski rajevi – iako su izvorno osnovane u drugim državama.

Rosing (2013) ukazuje na to da transferne cene predstavljaju izazov za mnoge multinacionalne kompanije. Vrednovanje transakcija između povezanih pravnih lica, posebno ukoliko se bar jedno nalazi u državi sa preferencijalnim poreskim sistemom, može biti predmet ispitivanja nacionalnih poreskih vlasti. Iako se transferne cene obično utvrđuju prema smernicama OECD-a (Behrens i saradnici, 2014), poreske vlasti različitih država mogu različito oceniti opravdanost izbora određene metode za njihovo utvrđivanje.

Takođe, multinacionalne banke mogu birati način nastupa u državi odredišta u cilju optimizacije poreskog opterećenja, birajući između filijale ili ogranka. S tim u vezi, Cerutti i saradnici (2007) pokazuju da banke češće posluju kao ogranci u državama sa većim poreskim opterećenjem nego u državama sa manjim poreskim opterećenjem.

Kompleksnost poreske regulative za banke u Srbiji

Za razliku od nekih drugih država, banke u Srbiji podležu istoj poreskoj regulativi kao i preduzeća iz realnog sektora – plaćaju iste poreske oblike i na njih se primenjuju iste poreske stope. Ipak, usled specifične prirode delatnosti, banke mogu imati određene poteškoće prilikom primene poreske regulative. Poput preduzeća iz realnog sektora, PDV, porez na dobitak i porez na dohodak građana predstavljaju poreske oblike koji im zadaju najviše poteškoća u obezbeđenju usklađenosti sa poreskom regulativom.

S obzirom na to da su osnovni (kreditni i depozitni) poslovi banke, kao i poslovi platnog prometa, oslobođeni PDV-a, ovaj poreski oblik je, na prvi pogled, od sekundarne važnosti za banke. Ipak, treba imati u vidu da su sve banke obveznici PDV-a, odnosno da su obavezne da mesečno ili tromesečno podnose poreske prijave za PDV nacionalnim poreskim vlastima. Na dan 30. septembar 2023. godine, u Srbiji je bilo aktivno dvadeset banaka, od kojih je njih dvanaest bilo jednomesečni, a njih osam tromesečni PDV obveznik.

Ipak, PDV je verovatno poreski oblik koji produkuje najviše specifičnosti za bankarski sektor. Pošto je najveći deo prometa banaka, po osnovu osnovnih bankarskih poslova, oslobođen PDV-a, banke mahom nemaju pravo da koriste prethodni PDV sadržan u primljenim računima. S druge strane, na neke usluge su banke dužne da obračunaju PDV. Tipičan primer jeste usluga zakupa sefova. Stoga, kada se vrši nabavka dobara ili usluga koji će biti korišćeni i za neoporeziv (na primer kreditiranje stanovništva i privrede) i za oporeziv promet (na primer izdavanje sefa u zakup), prethodni PDV se koristi delimično, odnosno vrši se podela prethodnog PDV-a prema ekonomskoj pripadnosti (na primer površina zakupljenog poslovnog prostora može biti osnova za podelu prethodnog PDV-a ukoliko je moguće utvrditi koliko se kvadratnih metara koristi za oporeziv promet, a koliko za promet oslobođen PDV-a). Ukoliko podela prema ekonomskoj pripadnosti nije moguća, vrši se srazmerni odbitak PDV-a.

Srazmerni odbitak PDV-a je uređen članom 30. Zakona o PDV (Službeni glasnik RS, 84/2004, 86/2004, ..., 138/2022). Procenat u kojem banka ima pravo da koriste prethodni PDV se utvrđuje stavljanjem u odnos prometa dobara i usluga sa pravom na odbitak prethodnog PDV-a (u koji nije uključen PDV) i ukupnog prometa dobara i usluga (u koji nije uključen PDV), posmatrano za period od 1. januara tekuće godine do isteka poreskog perioda za koji se poreska prijava podnosi.

Ovakve odredbe dovode do određenih specifičnih situacija u obračunu PDV-a u bankama. Primera radi, veliki broj banaka plaća usluge oglašavanja na društvenim mrežama, u kojima nude kredite ili štednju građanima i preduzećima. Kako su kreditni i depozitni poslovi oslobođeni PDV-a, banka (za razliku od preduzeća iz realnog sektora) neće imati pravo da koristi prethodni PDV po ovom osnovu. Pošto su društvene mreže u inostranom vlasništvu, pa je dobavljač usluge oglašavanja nerezidentno preduzeće, banka mora izvršiti interni obračun PDV-a, ali ga ne sme koristiti kao prethodni.

Nešto kompleksniji primer je kada banka plaća nadoknadu za korišćenje softvera nerezidentnom pravnom licu. U takvim uslovima je banka dužna da obračuna i porez po odbitku (kao vrstu poreza na dobitak), pri čemu porez po odbitku ulazi u osnovicu za interni obračun PDV-a. U zavisnosti od toga da li se softver koristi isključivo za promet oslobođen PDV ili i za promet na koji banka plaća PDV, interno obračunati PDV ne može koristiti kao prethodni ili se vrši srazmerni odbitak PDV-a.

Nešto manje specifičnosti se vezuje za oporezivanje dobitka banaka. Generalno, pravila za utvrđivanje osnovice za porez na dobitak su izuzetno slična onima za preduzeća iz realnog sektora.

Ova pravila su uređena Zakonom o porezu na dobit pravnih lica (Službeni glasnik RS, 25/2001, 80/2002, ..., 118/2021). Jedan važan izuzetak od opštih pravila, koji se odnosi na banke, je predviđen članom 62. ovog zakona. Tako, preduzećima iz realnog sektora se u poreskom bilansu priznaju rashodi kamate iz pozajmica od povezanih pravnih lica najviše do četvorostrukog iznosa sopstvenog kapitala preduzeća. Za banke je taj limit jednak desetostrukom iznosu sopstvenog kapitala.

U kontekstu poreza na dobitak, određene specifičnosti za bankarski sektor se javljaju u domenu poreskih podsticaja. S tim u vezi, glavni poreski podsticaj velikim preduzećima iz realnog sektora obično nije dostupan bankama. Radi se o poreskom podsticaju kod ulaganja u stalnu imovinu, gde se preduzeće oslobađa plaćanja poreza na dobitak (srazmerno ulaganju) u periodu od deset godina, ukoliko u stalnu imovinu uloži barem milijardu dinara i dodatno zaposli sto radnika. Imajući u vidu relativno malo učešće stalne imovine u ukupnoj imovini banke, nije iznenađujuće da veliki broj banaka ne koristi ovaj podsticaj.

S druge strane, banke u mnogo većoj meri koriste prihode od kamata na državne dužničke hartije od vrednosti za svrhe umanjavanja opterećenja porezom na dobitak. Ovi prihodi, kao i prihodi od dividendi isplaćeni od strane rezidentnih obveznika, su oslobođeni poreza na dobitak. Ovi prihodi predstavljaju glavni izvor umanjavanja efektivne stope poreza na dobitak u bankarskom sektoru. Takođe, banka je na raspolaganju poreski kredit po osnovu Zakona o konverziji stambenih kredita indeksiranih u švajcarskim francima (Službeni glasnik RS, 31/2019).

Značajnu pažnju banke moraju posvetiti izloženosti poreskom riziku po osnovu povezanosti sa poreskim rajevima. Neke banke u Srbiji su u vlasništvu entiteta koji su rezidenti poreskih rajeva. Primera radi, srpska filijala jedne velike italijanske multinacionalne bankarske grupe je u stoprocentnom vlasništvu entiteta registrovanog u Luksemburgu. Iako se nalazi u Evropskoj uniji, Luksemburg važi za jedan od poznatijih poreskih rajeva. Svakako, postojanje entiteta iz poreskog raja u vlasničkoj strukturi ne znači ništa ilegalno per se, ali ga nacionalne poreske vlasti mogu smatrati kao važno upozorenje.

Pored toga, banke moraju posvetiti pažnju transakcijama sa, povezanim ili nepovezanim, entitetima iz poreskih rajeva. S tim u vezi, član 40. Zakona o porezu na dobit pravnih lica predviđa plaćanje poreza po odbitku za određena plaćanja nerezidentima, poput isplate dividendi, kamata, naknada za korišćenje intelektualne svojine i slično. Standardna stopa poreza po odbitku iznosi 20%, ali ukoliko se isplata (izuzev isplate dividendi) vrši rezidentima poreskih rajeva (prema Pravilniku o listi jurisdikcija sa preferencijalnim poreskim sistemom, Službeni glasnik RS, 122/12), stopa poreza po odbitku iznosi 25%. Dodatno, specifičnost banaka se ogleda u tome što one imaju dvostruku odgovornost po pitanju transakcija sa poreskim rajevima – moraju obezbediti usklađenost svojih transakcija sa poreskom regulativom, ali, takođe, ne smeju biti facilitatori poreske evazije koju bi vršili njihovi klijenti kroz transakcije sa poreskim rajevima.

Banke u Srbiji se, takođe, suočavaju sa relativno kompleksnom regulativom po pitanju poreza na dohodak građana. Ipak, treba istaći da u ovom domenu nema izraženijih razlika između oporezivanja preduzeća iz realnog sektora i banaka. S druge strane, česte promene Zakona o porezu na dohodak građana (Službeni glasnik RS, 24/2001, 80/2002, ..., 6/2023) i njegova obimnost dovode do toga da je ovo verovatno najkompleksniji poreski oblik u Srbiji. Obračun osnovne zarade zaposlenima u bankama je relativno jednostavan, premda je potrebno kontinuirano pratiti promene stopa poreza na zarade i doprinosa za obavezno socijalno osiguranje, kao i promenu iznosa poreske olakšice.

Osim ugovora o radu, banke u Srbiji zaključuju veliki broj ugovora o radnom angažovanju lica bez zaposlenja. Takvi su, primera radi, ugovor o delu ili ugovor o autorskom delu i njihov poreski tretman je značajno različit u odnosu na poreski tretman osnovne zarade. Takođe, veliki broj banaka organizuje rekreaciju i team building aktivnosti za svoje zaposlene. Od 2019. godine, ove aktivnosti imaju poseban poreski tretman, koji je propisan Pravilnikom o ostvarivanju prava na poresko oslobođenje po osnovu organizovanja rekreacije, sportskih događaja i aktivnosti za zaposlene (Službeni glasnik RS, 50/2019).

Značajan porez na dohodak građana banke u Srbiji plaćaju po osnovu transakcija sa svojim depozitarima. Prihod od kamate koji stanovništvo ostvari po osnovu dinarske štednje je neoporeziv, ali je prihod od kamate na deviznu štednju oporeziv porezom na prihode od kapitala po stopi od 15%. Ovaj porez je vrsta poreza po odbitku, što znači da ga banka plaća u ime depozitara.

Istraživanje na srpskim bankama u periodu od 2018. do 2020. godine (Vržina, 2021) je pokazalo da nešto više od polovine banaka obelodanjuje informacije o poreskom riziku u napomenama uz finansijske izveštaje, mada većina njih to radi na relativno formalan i uopšten način. Štaviše, uočen je značajan broj banaka koji o poreskom riziku izveštava na potpuno isti način. U istraživanju je pokazano da je verovatnoća obelodanjivanja informacija o poreskom riziku statistički značajno manja kod banaka u stranom vlasništvu u Srbiji u odnosu na banke u domaćem vlasništvu. Ovaj nalaz je delimično objašnjen činjenicom da većina stranih banaka, zapravo, predstavlja filijale multinacionalnih bankarskih grupa, koje ne anticipiraju mogućnost plaćanja poreskih kazni usled veličine i jake pregovaračke moći bankarske grupe kojoj pripadaju. Takođe, istraživanje je pokazalo i da je verovatnoća obelodanjivanja informacija o poreskom riziku statistički značajno veća kod manje profitabilnih banaka i banaka sa manjim opterećenjem porezom na dobitak.

Empirijsko istraživanje o obelodanjivanju o poreskom riziku Metodologija istraživanja

Većina banaka u Srbiji i državama okruženja se nalazi u stranom vlasništvu. Obično se radi o multinacionalnim bankarskim grupama, koje posluju u više država Balkana. Za svrhe ovog rada, posmatrane su prakse obelodanjivanja o poreskom riziku u napomenama uz finansijske izveštaje u Srbiji i četiri države bivše Socijalističke Federativne Republike Jugoslavije: Bosni i Hercegovini, Crnoj Gori, Hrvatskoj i Severnoj Makedoniji. Praćene su prakse obelodanjivanja o poreskom riziku filijala multinacionalnih banaka u različitim državama, kako bi se ispitalo da li prakse obelodanjivanja iste multinacionalne banke razlikuju po državama.

Uzorkovane su isključivo banke koje predstavljaju filijale multinacionalnih bankarskih grupa. Drugim rečima, uzorkovane su multinacionalne bankarske grupe čija se matična kompanija ne nalazi ni u jednoj od uzorkovanih država. Na taj način je formiran uzorak od osam bankarskih grupa, pri čemu se matične kompanije svake od njih nalaze na teritoriji Evropske unije (Austrija, Italija, Mađarska, Nemačka i Slovenija). Ukupno je uzorkovano 28 banaka, koje predstavljaju filijale osam bankarskih grupa. Uzorak je formiran na dan 30. septembar 2023. godine, a spisak uzorkovanih banaka prema pripadnosti bankarskoj grupi i državi u kojoj posluju je prikazan u Tabeli 1.

Tabela 1: Spisak uzorkovanih banaka

	Srbija	Hrvatska	Bosna i Hercegovina	Crna Gora	Severna Makedonija	Ukupno
Bankarska grupa 1	√	√	√	√		4
Bankarska grupa 2	√	√	√			3
Bankarska grupa 3	√	√	√	√	√	5
Bankarska grupa 4	√		√	√	√	4
Bankarska grupa 5	√	√		√		3
Bankarska grupa 6	√		√		√	3
Bankarska grupa 7	√	√	√			3
Bankarska grupa 8	√	√	√			3
Ukupno	8	6	7	4	3	28

Podaci iz napomena uz finansijske izveštaje su preuzeti sa zvaničnih internet prezentacija banaka. U radu su korišćeni podaci iz pojedinačnih finansijskih izveštaja, kako bi se minimizirao uticaj nerezidentnih pravnih lica i uticaj nebankarskih povezanih pravnih lica. Korišćeni su finansijski izveštaji za 2022. godinu, kao poslednju dostupnu godinu u momentu sprovođenja istraživanja.

Praksa obelodanjivanja o poreskom riziku banaka nije unificirana. S tim u vezi, banke najčešće obelodanjuju informacije o poreskom riziku na neki od sledećih načina:

- obelodanjivanje informacija o poreskom riziku kao zasebna tačka napomena uz finansijske izveštaje;
- obelodanjivanje informacija o poreskom riziku u okviru sekcije upravljanje rizicima (zajedno sa ostalim vrstama rizika, poput kreditnog, kamatnog ili deviznog rizika) i
- obelodanjivanje informacija o poreskom riziku u okviru sekcije potencijalne i preuzete obaveze.

S druge strane, veliki broj banaka ne obelodanjuje direktno informacije o poreskom riziku, ali obelodanjuje informacije o određenim elementima poreskog rizika, poput poreskih inspekcija. Ovakva obelodanjivanja se obično vrše na neki od sledećih načina:

- u okviru svodenja dobitka pre oporezivanja (iz bilansa uspeha) na oporezivi dobitak (iz poreskog bilansa);
- u okviru analize ključnih izvora procene neizvesnosti i
- u okviru obelodanjivanja računovodstvenih politika.

Rezultati istraživanja

U Tabeli 2 su predstavljene prakse obelodanjivanja o poreskom riziku u napomenama uz finansijske izveštaje za svih osam uzorkovanih bankarskih grupa. U tabeli su rangirane prakse obelodanjivanja o poreskom riziku od najmanje sofisticirane (0 – bez obelodanjivanja o poreskom riziku) od najsofisticiranije (6 – najkompletnije obelodanjivanje o poreskom riziku).

Tabela 2: Model obelodanjivanja o poreskom riziku u napomenama uz finansijske izveštaje

	Srbija	Hrvatska	Bosna i Hercegovina	Crna Gora	Severna Makedonija
Bankarska grupa 1	0	1	2	0	
Bankarska grupa 2	4	2	2		
Bankarska grupa 3	4	0	0	6	6
Bankarska grupa 4	4		2	3	1
Bankarska grupa 5	4	2		6	
Bankarska grupa 6	0		2		3
Bankarska grupa 7	0	2	2		
Bankarska grupa 8	0	0	2		

Napomena: 0 – ne obelodanjuje; 1 – u okviru računovodstvenih politika; 2 – u okviru ključnih izvora procene neizvesnosti; 3 – u okviru svođenja dobitka pre oporezivanja na oporezivi dobitak; 4 – u okviru potencijalnih i preuzetih obaveza; 5 – u okviru upravljanja rizicima; 6 – zasebna tačka u napomenama uz finansijske izveštaje.

Generalno, moguće je primetiti da se prakse obelodanjivanja o poreskom riziku značajno razlikuju između filijala u okviru jedne bankarske grupe. Ni jedna uzorkovana bankarska grupa nema unificiranu praksu obelodanjivanja o poreskom riziku u svim državama u kojima posluje. To može ukazivati na to da bankarske grupe prilagođavaju obelodanjivanja o poreskom riziku u skladu sa procenjenim poreskim rizikom u državi u kojoj posluje.

Dodatno, interesantno je primetiti da samo tri uzorkovane bankarske grupe obelodanjuju bilo kakve informacije o poreskom riziku u svim uzorkovanim državama. Interesantan je i primer bankarske grupe 3, koja u Hrvatskoj ne obelodanjuje informacije o poreskom riziku, ali obelodanjuje informacije o upravljanju porezima kao delu društveno odgovornog poslovanja, na sledeći način:

Banka je oduvek vodila brigu o poreskoj usklađenosti, te o poštovanju i doslednoj primeni poreskih propisa. Banci je kao društveno odgovornom preduzetniku stalo da se javne potrebe države u kojoj radi uredno podmiruju i da banka plaća pošten iznos poreza, odnosno iznos poreza koji je dužna da plati prema poreskim propisima. U tu svrhu, od marta 2017. godine, u banci deluje odeljenje za poreze banke u Hrvatskoj.

Srbija i Bosna i Hercegovina su specifične države sa aspekta obelodanjivanja o poreskom riziku, usled činjenice da se (izuzev odsustva obelodanjivanja o poreskom riziku) informacije o poreskom riziku obelodanjuju na samo jedan način – u Srbiji u okviru potencijalnih i preuzetih obaveza, a u Bosna i Hercegovini u okviru ključnih izvora procene neizvesnosti.

U Tabeli 3 je predstavljena struktura uzorkovanih banaka prema modelu obelodanjivanja o poreskom riziku. Primetno je da najveći deo banaka obelodanjuje informacije o poreskom riziku u okviru ključnih izvora procene neizvesnosti.

S druge strane, oko svega 10% uzorkovanih banaka obelodanjuje informacije o poreskom riziku na najsofisticiraniji način – kao zasebnu tačku u napomenama uz finansijske izveštaje. Iznenadujuće je primetiti da ni jedna banka ne obelodanjuje informacije o poreskom riziku u okviru sekcije o upravljanju rizicima.

Tabela 3: Distribucija banaka prema modelu obelodanjivanja o poreskom riziku

	Model obelodanjivanja	Broj banaka	Procenat banaka
0	Bez obelodanjivanja o poreskom riziku	8	28,57%
1	U okviru računovodstvenih politika	2	7,14%
2	U okviru ključnih izvora procene neizvesnosti	9	32,14%
3	U okviru svođenja dobitka pre oporezivanja na oporezivi dobitak	2	7,14%
4	U okviru potencijalnih i preuzetih obaveza	4	14,29%
5	U okviru upravljanja rizicima	0	0,00%
6	Zasebna tačka u napomenama uz finansijske izveštaje	3	10,71%
Ukupno		28	100,00%

Važno je primetiti da čak 75% uzorkovanih banaka ne obelodanjuje informacije o poreskom riziku ili koristi manje sofisticirane modele obelodanjivanja (u okviru računovodstvenih politika, ključnih izvora procene neizvesnosti ili svođenja dobitka pre oporezivanja na oporezivi dobitak). Ovakva praksa je posebno izražena kod banaka u Bosni i Hercegovini i Hrvatskoj.

Generalno, obelodanjivanja o poreskom riziku uzorkovanih banaka (nezavisno od izabranog modela obelodanjivanja) su relativno skromna. U vezi sa obelodanjivanjem u okviru računovodstvenih politika ili ključnih izvora procene neizvesnosti, banke obično obelodanjuju jedan pasus u okviru kojeg konstatuju mogućnost naknadnih kontrola od strane nacionalnih poreskih vlasti. Drugim rečima, poreski rizik se ni ne pominje kao posebna sintagma, već se isključivo govori o mogućnosti naknadnih dodatnih poreskih plaćanja. Tipičan primer ovakvog obelodanjivanja je prikazan u nastavku:

Poreske prijave podležu proveru Poreske uprave. Zbog činjenice da je sprovođenje poreskih zakona i poreske regulative različitih transakcija podložno različitim interpretacijama, iznosi prikazani u finansijskim izveštajima se mogu naknadno promeniti, u zavisnosti od konačnih nalaza Poreske uprave.

S druge strane, banke koje koriste sofisticiranije modele obelodanjivanja o poreskom riziku (u okviru potencijalnih i preuzetih obaveza, u okviru upravljanja rizicima ili kao zasebna tačka u napomenama uz finansijske izveštaje) pružaju nešto više podataka, ali su njihova obelodanjivanja, takođe, izuzetno štura. Tipičan primer takvog obelodanjivanja je prikazan u nastavku:

Poreski sistem države u kojoj banka posluje je u procesu kontinuirane revizije i izmena.

U državi u kojoj banka posluje poreski period je otvoren tokom perioda od pet godina.

U različitim okolnostima, poreske vlasti mogu imati različite pristupe određenim pitanjima i mogu utvrditi dodatne poreske obaveze zajedno sa zateznim kamatama i penalima. Rukovodstvo banke smatra da su poreske obaveze evidentirane u priloženim finansijskim izveštajima pravilno iskazane.

Primetno je i da su obelodanjivanja o poreskom riziku banaka izuzetno saglasna. Ovaj nalaz posebno važi za banke u Srbiji i Bosni i Hercegovini. To može ukazivati na to da banke obelodanjivanje o poreskom riziku posmatraju kao rutinsku aktivnost. S druge strane, korisnici finansijskih izveštaja na ovaj način ostaju bez nekih važnih informacija o poreskim aktivnostima banke. Primera radi, banke ne obelodanjuju podatke o poreskim kontrolama tokom godine (jesu li ih imali i kakvi su nalazi poreskih inspektora), neizvesnim poreskim pozicijama (kod kojih je postoji značajna verovatnoća da će biti osporene tokom poreske kontrole), povezanim pravnim licima koja su rezidenti država sa preferencijalnim poreskim sistemom i slično.

Zaključak

Poreski rizik je u Srbiji dobio na važnosti u poslednje dve decenije, a posebno nakon transformacije na tržišno-orijentisanu privredu i značajnog priliva stranih direktnih investicija. S tim u vezi, u radu su ispitane mogućnosti za upravljanje poreskim rizikom u multinacionalnim bankama koje posluju u Srbiji. Drugim rečima, identifikovani su neki od osnovnih izvora poreskog rizika za multinacionalne banke i analizirane su prakse obelodanjivanja o poreskom riziku u napomenama uz finansijske izveštaje banaka.

Verovatno najviše specifičnosti po pitanju primene poreske regulative banke u Srbiji imaju po pitanju PDV-a. Iako ovaj poreski oblik ima relativno mali značaj za banke, jer je većina bankarskih poslova oslobođena PDV-a, specifičnosti po pitanju prava na korišćenje prethodnog PDV-a i (ne)postojanje obaveze obračuna PDV-a na određene bankarske aktivnosti predstavljaju izazove sa kojima poreska odeljenja u bankama moraju da se bore.

S druge strane, značajno veći značaj za banke ima porez na dobitak, premda je primena regulative poreza na dobitak gotovo identična u bankarskom sektoru i preduzećima iz realnog sektora. Određene specifičnosti se odnose na drugačija pravila za sprečavanje utanjene kapitalizacije u bankarskom sektoru, kao i na postojanje poreskih kredita za banke po osnovu odobrenih zajmova indeksiranih u švajcarskim francima.

Takođe, empirijsko istraživanje je pokazalo da filijale multinacionalnih banaka u Srbiji samo u skromnoj meri obelodanjuju informacije o poreskom riziku. Obelodanjene informacije su relativno štire i isuviše uopštene, te nisu od velike koristi korisnicima finansijskih izveštaja. Takođe, pokazano je da filijale iste multinacionalne bankarske grupe u različitim državama obelodanjuju informacije o poreskom riziku na različit način. Ovo ukazuje na to da banke prilagođavaju obelodanjivanja u skladu sa procenjenim stepenom poreskog rizika u državi u kojoj posluju.

Autor veruje da rezultati istraživanja mogu biti od koristi brojnim interesnim grupama, a posebno menadžmentu multinacionalnih bankarskih grupa, kao i poreskim odeljenjima, komplajans odeljenjima i računovodstvenim odeljenjima multinacionalnih banaka. Razumevanje izvora i načina za upravljanje poreskim rizikom, predstavljenih u ovom radu, je osnova obezbeđenja usklađenosti sa poreskom regulativom, u cilju izbegavanja poreskih kazni tokom poreskih kontrola.

Prezentovane rezultate treba koristiti u svetlu određenih ograničenja. Moguće je da bi zaključci istraživanja bili drugačiji da su uzorkovane druge bankarske grupe, odnosno da je uzorkovan drugi vremenski period. Takođe, poreska regulativa banaka je analizirana sa aspekta Srbije, te se zaključci istraživanja ne mogu analogno preneti na ostale države.

Istraživanje u ovom radu ostavlja značajan prostor za buduća istraživanja. Primera radi, buduća istraživanja bi mogla ispitati najznačajnije izvore poreskog rizika u bankama i prakse upravljanja poreskim rizikom, na bazi metode intervjua ili upitnika sa zaposlenima u banci. Takođe, interesantno bi bilo poređenje poreskog rizika u bankama u razvijenim evropskim državama i u državama Jugoistočne Evrope.

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TAX RISK MANAGEMENT IN MULTINATIONAL BANKS: A VIEW FROM SERBIA

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Abstract : Considering the significant cross-national differences between tax systems, multinational banks are facing a challenge to secure compliance with the tax regulation of each country. In this regard, multinational banks tend to minimize tax risk exposure and the probability that national tax authorities will consider certain tax treatment as illegal. The paper studies the main sources of tax risk for subsidiaries of multinational banks in Serbia. It is pointed out that banks are facing important challenges to secure compliance with the tax regulation, particularly value-added tax and corporate income tax regulation. The paper also shows that subsidiaries of multinational banks in Serbia and neighboring countries disclose the information on the tax risk in notes to the financial statements only to a moderate extent. In addition, multinational banks disclose information on tax risk using different models in different countries, implying that they adapt the disclosure to the assessed level of the tax risk in each country.

Keywords: tax risk, risk management, banks, multinational companies, tax regulation.

JEL classification: G21, H25, H26, F23, K34, G32

Introduction

Although the importance of improving risk management and internal controls systems was highlighted after big corporate scandals at the beginning of the XXI century, tax risk is one of the risk management areas that is often neglected (Wunder, 2009). Tax risk is often considered in the context of uncertain tax outcomes (Neuman et al., 2020) and outcomes of the tax audits, as it is sometimes hard to decide on the tax treatment of the transaction with absolute certainty. Complexity of the tax regulation contributes to this (Hoppe et al., 2023), as well as the inability of the tax regulation to, clearly and in advance, prescribe tax treatment of each possible transaction due to a significant variety of business transactions.

Tax risk in banks is often a result of a bank owner's and management's intentions to reduce the tax burden. On the one side, tax departments of the banks have a task to secure compliance with the tax regulation, which quite often results in a higher tax burden, but, on the other side, also have a task to optimize the tax burden so as to minimize it (Hogsden, 2018). In this regard, banks implement tax planning strategies, using tax incentives prescribed by the law and these strategies do not considerably increase the bank's tax risk. However, banks may also employ tax avoidance strategies, using loopholes of the tax law and these strategies may considerably increase the bank's exposure to the tax risk (Merks, 2006).

In order to properly manage risks, a majority of banks has formed tax departments within subsidiaries in countries in which they operate. In this regard, managers of the internal tax departments often bear a significant part of the company's tax risk (Wunder, 2009). Tax departments reduce, inter alia, the pressure on bank management not only from the national tax authorities, but also from the public (Bruhne & Schanz, 2022).

The subject of the paper is tax risk management of multinational banks, considered as a string of activities towards minimization of tax risk exposure and minimization of the probability that national tax authorities would consider certain tax treatment as illegal. Regarding tax risk management, it is possible to identify two main objectives of the paper. The first is to analyze the main sources of tax risk in banks, while the second is to examine the extent to which banks make disclosures about the tax risk in the notes to the financial statements.

Research about tax risk in multinational banks may be of interest to several interest groups. Identification of main sources of the tax risk, analysis of the possibilities to manage tax risk and to disclose about the tax risk may be of interest to employees in banks in Serbia – management of the banks, but also the employees in the tax and compliance departments and in banks accounting.

The paper contributes to the string of prior research on multinational banks. Research on the subsidiaries of the multinational banks are of particular importance for countries in transition, including Serbia, as the banking sectors of these countries are dominated by multinational banks. To the best of the author's knowledge, this is the first research on tax risk management in subsidiaries of multinational banks in Serbia.

Aside from the introduction and conclusion, the paper consists of three parts. The first part of the paper gives a literature overview about the tax risk in multinational banks. The second part of the paper analyzes the main sources of tax risk in the Serbian banking system, while the third part presents empirical research about the disclosure of tax risk in subsidiaries of multinational banks in Serbia and neighboring countries.

Literature Review

Banks cope with some level of tax risk in every country, primarily due to the complex tax regulation, i.e. potentially different interpretation of the tax law between national tax authorities and bank management. Artemenko et al. (2017) identify various sources of tax risk. As they should secure compliance with the tax regulation of numerous countries, multinational banks are in a more difficult position than domestic banks (which operate in one country). This holds for each well-known tax type, but primarily to value-added tax (VAT) and corporate income tax.

Due to significant cross-national differences in tax systems, multinational companies face specific challenges regarding VAT in each country (Xu et al., 2018). In most countries, special rules are prescribed for the VAT in banks. Indeed, most of the financial services that banks offer are VAT-exempt in most countries (Poddar & English, 1997), so banks face many dilemmas to separate services that are and that are not taxable with VAT, to deduct VAT from the received invoices or not etc.

Multinational banks also face significant disharmony regarding other tax types, such as corporate income tax or personal income tax. For instance, in the context of corporate income tax, different countries implement different rules to calculate a taxable base, different tax rates and tax incentives. Although there were some proposals in the European Union to harmonize the rules for the calculation of the tax base (Munin, 2011), through the CCTB (Common Corporate Tax Base) project, a significant improvement is yet to be made. Cnossen (2018) notes that such harmonization would result in decrease of costs of compliance with the tax regulation.

As a result of significant exposure to tax risk, multinational companies manage it within specialized tax departments in the company or by acquiring external tax consultants. Regarding specialized tax departments within the company, Mulligan & Oats (2016) note that almost every multinational company has included specialized tax departments in its organizational structure in the last few decades.

Multinational banks usually have compliance departments, responsible for securing the compliance of the bank's business with the regulation, but also separate tax departments. Besides minimization of the exposure to the tax risk and securing the compliance with the tax regulation, Crocker & Slemrod (2005) note that the focus of such departments is also put on the active tax liabilities management in order to minimize them. As a society may consider the strategies of tax management in the context of socially (un)responsible activities (Dowling, 2014), Hogsden (2018) argues that specialized tax departments within the company develop tax management strategies that secure compliance with the tax regulation, minimize tax burden, and eliminate negative reactions from the public.

Managers of the specialized tax departments within the multinational companies are often in challenging position, as they should balance between minimization of tax risk (which often assumes safe and less cost-efficient strategies) and minimization of tax burden (which often assumes risky, but cost-efficient strategies). In this regard, Robinson et al. (2010) show that specialized tax departments are usually designed as profit centers rather than cost centers, implying that owners and management of the companies expect from such departments to participate in cost minimization and increase of the company's profitability. There are also findings showing that the performance of specialized tax departments is usually measured with the level of tax burden (Douglas et al., 1996), and that there is negative correlation between fees of the tax department managers and the company tax burden (Armstrong et al., 2012).

On the other hand, external tax consultants may be in a similar position. They are expected to secure the compliance of activities of multinational companies with the tax regulation. However, Hogan & Noga (2015) note that acquiring external tax consultants usually results in a significant decrease of the company's tax burden. For instance, external tax consultants may be more familiar with the tax incentives in the countries in which a multinational company operates. In addition, they may more objectively analyze the tax implications of the transfer pricing between related-party entities. External tax consultants may also better interpret double taxation avoidance agreements to help multinational companies avoid paying withholding taxes on transactions between related-party entities.

Sikka (2015) argues that accounting companies that are part of the Big 4 group – Deloitte, EY, KPMG and PwC are usually acquired as external tax consultants. On the other hand, multinational companies sometimes acquire local consulting companies, as such companies have a narrow focus and expertise for the tax system of only one country.

A significant portion of the tax risk of multinational banks originates from the activities with entities in tax havens – the existence of a tax haven entity in the bank's ownership structure and transactions with the tax haven residents. Merz & Overesch (2016) note that banks with multinational presence are in a position to shift a large fraction of their income in tax havens in order to minimize their world-wide tax burden. On the other hand, the presence of the company in a tax haven and related-party transactions with tax havens significantly increase the probability of subsequent tax payments to the national tax authorities (Taylor et al., 2018).

Regarding the presence of the multinational banks in tax havens, it is important to note that banks may use not only traditional tax havens (for instance remote and exotic islands), but also numerous tax havens within the European continent (Rusina, 2020). Thus, a large number of European banks is registered in the Netherlands or Luxembourg – countries that are European Union members, but also well-known tax havens – although they were initially founded in other countries.

Rosing (2013) points out that transfer prices are a challenge for many multinational companies. The valuation of the transactions between related-party entities, particularly if at least one of them is located in a country with a preferential tax system, may be a subject of audits of national tax authorities. Although transfer prices are usually calculated in line with OECD guidelines (Behrens et al., 2014), national tax authorities of different countries may in different ways consider a justification of choosing a certain method for their calculation.

In addition, multinational banks may choose the model of entry in the destination country in order to optimize the tax burden, choosing between subsidiary and branch. In this regard, Cerutti et al. (2007) show that banks are more likely to operate as branches in countries with higher tax burden than in the countries with lower tax burden.

Complexity of Tax Regulation for Banks in Serbia

Unlike some other countries, banks in Serbia are subject to the same regulation as real-sector companies – they pay the same tax types and the same tax rates are imposed on them. However, due to the specific nature of their industry, banks may have certain difficulties in the implementation of tax regulation. Like in real-sector companies, VAT, corporate income tax, and personal income tax are the tax types that prove most difficulties to banks in securing compliance with the tax regulation.

Since basic (credit and deposit) bank activities and the payments processing are VAT-exempt, this tax type is, at first, of a second-order importance for banks. However, it should be noted that each bank is a VAT taxpayer, as they are required to monthly or quarterly submit a VAT return to the national tax authorities. As of 30 September 2023, twenty banks actively operate in Serbia and twelve of them are monthly VAT taxpayers, while eight of them are quarterly VAT taxpayers.

However, VAT is a tax type that probably produces most specificities in the banking sector. As the largest part of the bank's turnover from basic banking activities is VAT-exempt, banks usually do not have a right to deduct VAT from the received invoices. On the other hand, banks are required to calculate VAT on certain services. The typical example is a rental of safe deposit boxes. Therefore, when a bank purchases goods or services that will be used both for VAT-exempt (for instance loans to individuals and companies) and taxable activities (for instance a rental of safe deposit boxes), VAT from the received invoices is partially deducted, i.e. the VAT is divided according to the economic association (for instance, the area of rented office space may be a base to divide VAT, if it is possible to determine how many square meters are used for taxable activities and how many for VAT-exempt activities). If the division according to the economic association is not possible, proportionate tax deduction is conducted.

Proportionate VAT deduction is prescribed by article 30 of Law on VAT (The Official Gazette of the RS, 84/2004, 86/2004, ..., 138/2022). The percentage in which a bank may deduct VAT is calculated after dividing turnover of goods and services (without VAT) that allows VAT deduction and total turnover of goods and services (without VAT), measured from the beginning of the current year until the end of the fiscal period for which a tax return is filed.

Such law provisions result in some specific situations regarding the VAT calculation in banks. For instance, numerous banks pay for advertising services on social networks, offering loans or saving programs for individuals and companies. Since credit and deposit bank activities are VAT-exempt, banks (unlike real-sector companies) are not allowed to deduct VAT for such purchases. Since social networks are foreign-owned, the provider of advertising services is a nonresident company, and banks have to calculate reverse-charge VAT without the right to deduct it.

A slightly more complex example is a bank's royalty payment to nonresident companies for the rights to use software. In such circumstances, a bank is also required to calculate withholding tax (as a type of corporate income tax) that is part of a base for the reverse-charge VAT calculation. Reverse-charged VAT may not be deducted or may be proportionally deducted, depending on whether software is used only for VAT-exempt activities or also for activities that are taxable with VAT.

Fewer specificities are evident in the taxation of a bank's income. In general, rules for the calculation of the base for the corporate income tax are highly similar to those for real-sector companies. These rules are prescribed by Corporate Income Tax Law (The Official Gazette of the RS, 25/2001, 80/2002, ..., 118/2021). An important exception for the banks is prescribed by Article 62 of this law. In this regard, real-sector companies are allowed to recognize interest expenses from the related-party loans in their tax balance, up to the quadruple value of their shareholders' equity. For banks, such a limit is equal to ten-times the value of their shareholders' equity.

Regarding corporate income tax, some specificities are evident in the area of tax incentives. In this regard, the main tax incentives for large real-sector companies are usually not available to the banks. They are tax incentives for investments in fixed assets, which enable companies to use ten-year tax exemption (in proportion to the investment value) should they invest at least a billion Serbian dinars in fixed assets and additionally employ at least a hundred employees. Since fixed assets usually have a relatively low share of the total assets of banks, it is not surprising that many banks do not benefit from this incentive.

On the other hand, banks widely use interest yield on government securities to reduce the corporate income tax burden. Such yield, as well as dividends received from the resident taxpayers, are exempt from the corporate income tax. This type of revenue is the main strategy to reduce effective corporate income tax rates in the banking sector. In addition, banks may use tax credit in line with Law on the Conversion of Housing Loans Indexed to Swiss Francs (The Official Gazette of the RS, 31/2019).

Banks should pay significant attention to the exposure to the tax risk related to tax havens. Some banks in Serbia are owned by entities that are tax haven residents. For instance, the Serbian subsidiary of a large Italian multinational banking group is fully owned by an entity registered in Luxembourg. Although in the European Union, Luxembourg is one of the most famous tax havens. The presence of the tax haven entity of course does not mean anything illegal per se, but national tax authorities may consider it as an important sign.

In addition, banks should pay attention to transactions with related or nonrelated entities from tax havens. In this regard, Article 40 of the Corporate Income Tax Law prescribes paying withholding tax on certain payments to nonresidents, such as dividends, interests, royalties etc. Standard withholding tax rate is 20%, but if the payment (excluding dividends) is made to a tax haven resident (according to the Rulebook on the List of Jurisdictions with Preferential Tax System, The Official Gazette of the RS, 122/12), the withholding tax rate is 25%. Furtherly, specificities of banks also lie in the fact that they have double responsibility regarding transactions with tax havens – they should secure the compliance of their transactions with the tax regulation, but also, they should not be facilitators of tax evasion conducted by their clients through transactions with tax havens.

Banks in Serbia also face relatively complex regulation of personal income tax. However, it should be noted that there are no significant differences between taxation of real-sector companies and banks in this area. On the other hand, frequent changes of Personal Income Tax Law (The Official Gazette of the RS, 24/2001, 80/2002, ..., 6/2023) and its large number of articles result in the fact that this is probably the most complex tax type in Serbia. A calculation of the basic salary for employees in banks is relatively simple, though some changes in the labor tax rate, social security contributions rates and the tax reliefs should be continuously monitored.

Besides employment contracts, banks in Serbia sign many contracts to engage persons without formal employment. For instance, there are temporary service agreements and copyright contracts, and their treatment is significantly different to the tax treatment of the basic salary. In addition, many banks organize recreation and team building activities for employees. From 2019, such activities have specific tax treatment, prescribed by the Rulebook on Exercising Rights to Tax Exemption for Organizing Recreation, Sports Events and Activities for Employees (The Official Gazette of the RS, 50/2019).

A significant portion of the personal income tax paid by banks in Serbia refers to transactions with bank depositors. Interest yield from savings in Serbian dinars paid to resident individuals is exempt from taxation, but interest yield from savings in other currencies is taxable with a capital income tax of 15%. This tax is a type of withholdings taxes, implying that a bank pays it on behalf of depositors.

Research on Serbian banks between 2018 and 2020 (Vržina, 2021) showed that slightly more than a half of banks disclose information on the tax risk in notes to the financial statements, though most of them make only formal and generalized disclosures. The research also showed that the probability of disclosing information on the tax risk is statistically significantly lower for foreign-owned banks than for domestic banks. This finding is partially explained by the fact that most foreign-owned banks are subsidiaries of multinational banking groups, which do not anticipate, due to their size and strong bargaining power, the possibility of paying tax penalties. In addition, the research showed that the probability of disclosing information on tax risk is statistically significantly higher for less profitable banks and banks with lower corporate income tax burden.

Empirical Research on Tax Risk Disclosure

Research Methodology

Most banks in Serbia and neighboring countries are foreign owned. They are usually subsidiaries of multinational banking groups, which operate in several Balkan countries. For the purposes of this paper, we studied the practices of tax risk disclosure in the notes to the financial statements in Serbia and four countries of former Socialist Federal Republic of Yugoslavia: Bosnia and Herzegovina, Montenegro, Croatia and North Macedonia. The paper studies the practices of tax risk disclosure of subsidiaries of multinational banks in different countries in order to examine whether disclosure practices of the same multinational bank are different in different countries.

Only banks that are subsidiaries of the multinational banking groups were sampled. In other words, only multinational banking groups whose parent company is not located in any of the sampled countries were studied. In this regard, a sample of eight banking groups was developed, while parent companies of each group are located in the European Union (Austria, Italy, Hungary, Germany and Slovenia). In total, 28 banks that are subsidiaries of eight banking groups were sampled. The sample was developed on 30 September 2023 and the list of sampled banks, according to the banking group and country, is shown in Table 1.

Table 1: A list of Sampled Banks

	Serbia	Croatia	Bosnia and Herzegovina	Montenegro	North Macedonia	Total
Banking group 1	√	√	√	√		4
Banking group 2	√	√	√			3
Banking group 3	√	√	√	√	√	5
Banking group 4	√		√	√	√	4
Banking group 5	√	√		√		3
Banking group 6	√		√		√	3
Banking group 7	√	√	√			3
Banking group 8	√	√	√			3
Total	8	6	7	4	3	28

Data from the notes to the financial statements was retrieved from the official Internet presentations of banks. The paper used data from individual financial statements, in order to minimize the impact of nonresident legal entities and nonbanking related-party entities. Financial reports for 2022 were used, as a last available year in the moment of sampling.

The tax risk disclosure practice of banks is not uniform. In this regard, banks usually disclosure information on the tax risk using some of the following models:

- disclosing information on tax risk in a separate paragraph in notes to the financial statements;
- disclosing information on tax risk in a risk management section (along with the other risk types, such as credit, interest rate or foreign exchange risk) and
- disclosing information on tax risk in a commitments and contingencies section.

On the other hand, many banks do not directly disclose information on tax risk, but disclose information about certain elements of tax risk, such as tax audits. Such disclosures are usually made using some of the following models:

- within the reconciliation of pre-tax income (from income statement) to the taxable income (from taxable balance);
- within the analysis of the key sources of the uncertainty assessment and
- within the disclosure of accounting policies.

Research Results

Table 2 features the practices of tax risk disclosure in notes to the financial statements for each sampled banking group. The table shows practices of tax risk disclosure ranked from the least sophisticated (0 – without tax risk disclosure) to the most sophisticated (6 – the most complete tax risk disclosure).

Table 2: Models of the Tax Risk Disclosure in the Notes to the Financial Statements

	Serbia	Croatia	Bosnia and Herzegovina	Montenegro	North Macedonia
Banking group 1	0	1	2	0	
Banking group 2	4	2	2		
Banking group 3	4	0	0	6	6
Banking group 4	4		2	3	1
Banking group 5	4	2		6	
Banking group 6	0		2		3
Banking group 7	0	2	2		
Banking group 8	0	0	2		

Note: 0 – does not disclose; 1 – within the accounting policies; 2 – within key sources of the uncertainty assessment; 3 – within the reconciliation of pre-tax income to the taxable income; 4 – in a commitments and contingencies section; 5 – in a risk management section; 6 – separate paragraph in notes to the financial statements.

In general, it may be noted that practices of tax risk disclosure considerably differ within banking groups. Not one of the sampled banks has a unified practice of tax risk disclosure in each country in which operates. It may imply that banking groups adapt tax risk disclosures in line with the assessed level of the tax risk in a country in which it operates.

In addition, it is interesting to note that only three sampled banking groups disclosed some information on the tax risk in each sampled country. An example of banking group 3 is very interesting, as this group did not disclose information on the tax risk in Croatia, but disclosed information about managing taxes as a part of socially responsible activities, as follows:

The bank has always taken care of tax compliance, as well as the respectful and consistent implementation of the tax regulation. As a socially responsible entrepreneur, the bank cares about properly meeting the public needs of the country in which it operates and it pays a fair share of taxes, i.e. the amount of taxes that is required to pay in line with the tax regulation. For this purpose, as of March 2017, the bank in Croatia has a tax department.

Serbia and Bosnia and Herzegovina are specific countries from the aspect of tax risk disclosure, as the information on tax risk are disclosed (excluding banks without any disclosure) using only one model – in Serbia as a part of commitments and contingencies section, while in Bosnia and Herzegovina as a part of key sources of uncertainty assessment.

Table 3 features the structure of sampled banks according to the model of tax risk disclosure. It may be noted that most banks disclose information on tax risk within key sources of uncertainty assessment. On the other hand, only 10% of sampled banks disclose the information on tax risk using the most sophisticated model – as a separate paragraph in notes to the financial statements. It is quite surprising to note that no bank disclosed information on tax risk within the risk management section.

Table 3: Distribution of Banks According to the Model of tax Risk Disclosure

	Model of disclosure	Number of banks	% of banks
0	Does not disclose	8	28,57%
1	Within the accounting policies	2	7,14%
2	Within key sources of the uncertainty assessment	9	32,14%
3	Within the reconciliation of pre-tax income to the taxable income	2	7,14%
4	In a commitments and contingencies section	4	14,29%
5	In a risk management section	0	0,00%
6	Separate paragraph in notes to the financial statements	3	10,71%
Total		28	100,00%

It is worth noting that as much as 75% of sampled banks do not disclose the information on tax risk or use only less sophisticated disclosing models (within accounting policies, key sources of uncertainty assessment or reconciliation of pre-tax income to taxable income). Such practice is particularly evident in banks in Bosnia and Herzegovina and Croatia.

In general, disclosures about the tax risk of sampled banks (regardless of the used disclosing model) are relatively moderate. Regarding the disclosures within accounting policies or key sources of uncertainty assessment, banks usually disclose one paragraph in which they state the possibilities of subsequent audits from the national tax authorities. In other words, tax risk is not even mentioned as a special phrase, as only the possibility of subsequent additional tax payments is mentioned. The typical example of such disclosure is showed below:

Tax returns may be subject to audits from the Tax Administration. Due to the fact that the implementation of the tax law and tax regulation of various transactions may be interpreted differently, amounts presented in financial statements may be subsequently changed, depending on the final findings of the Tax Administration.

On the other hand, banks that use more sophisticated models of tax risk disclosure (in a commitments and contingencies section, risk management section or as a separate paragraph in notes to the financial statements) present slightly more data, but their disclosures are also decidedly poor. The typical example of such disclosure is showed below:

The tax system of the country in which a bank operates is in the process of continuous audits and changes. In a country in which the bank operates, the tax period is opened during a five-year period. In different circumstances, tax authorities may have different approaches to certain issues and impose additional tax liabilities with subsequent default interest and penalties. Bank management argues that tax liabilities presented in the attached financial statements are adequately reported.

It may also be noted that disclosures of the bank's tax risk are highly similar. This finding particularly holds for banks in Serbia and Bosnia and Herzegovina. It may imply that banks consider disclosure of the tax risk a routine activity. On the other hand, in this way the users of financial statements are left without some important information about the bank's tax activities. For instance, banks do not disclose data on tax audits during the year (whether there were some audits and findings of them), uncertain tax positions (that are highly probable to be disputed during a tax audit), related-party entities that are residents of the countries with preferential tax system etc.

Conclusion

Tax risk gained significant attention in Serbia in the last two decades, particularly after the transformation to the market-oriented economy and a larger inflow of foreign direct investments. In this regard, the paper studied the possibilities to manage tax risk in multinational banks that operate in Serbia. In other words, some of the main sources of tax risk in multinational banks are identified and practices of tax risk disclosure in the notes to the financial statements are analyzed.

Regarding the implementation of the tax regulation, banks in Serbia have probably the most specific features in relation to VAT. Although this tax type has relatively little significance for banks, as most of the banking activities are VAT-exempt, specific features regarding the right to deduct VAT from the received invoices and the (non)existence of the obligation to calculate VAT on certain banking activities are important challenges that banks have to cope with.

On the other hand, corporate income tax has a considerably higher importance for banks, though the implementation of the corporate income tax regulation is nearly identical in the banking sector and real-sector companies. Certain specific features relate to the different rules for the prevention of thin capitalization, as well as the availability of tax credit to banks on behalf of loans indexed in Swiss francs.

In addition, the empirical research showed that subsidiaries of multinational banks in Serbia disclose information on tax risk only to a moderate extent. Disclosed information is relatively poor and highly generalized, so it is not highly useful to the users of financial statements. It is further shown that subsidiaries of the same multinational banking group disclose information on tax risk using different models in different countries. This implies that banks adapt the disclosures in line with the assessed level of tax risk in the country in which they operate.

Author believes that research results may be of interest to many interest groups, particularly to the management of multinational banking groups, as well as to the tax departments, compliance departments and accounting departments of the multinational banks. Understanding the sources of tax risk and the way to manage it, presented in this paper, are the basis to secure compliance with the tax regulation, in order to avoid tax penalties during tax audits.

Presented results should be used in the light of certain limitations. It is possible that the research conclusions would be different if other banking groups were sampled or if a different time period had been sampled. In addition, tax regulation of banks is analyzed from the Serbian aspect, so research conclusions should not be analogously transferred to other countries.

Research in this paper leaves significant room for future research. For instance, future research may study the most important sources of tax risk and practices of its management, using methods of interview or questionnaire with employees in banks. In addition, it would also be interesting to compare tax risk in banks in developed European countries and Eastern European countries.

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