MERGER AND ACQUISIONS IN ROMANIA. ACCOUNTING AND FISCAL ISSUES[1]

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Abstract

Nowadays the need for revenues for the state budget is one of the main issues and concerns of the Romanian authorities. The Romanian legislator positive surprise the public by issuing regulations to facilitate implementation of restructuring measures such as division, merger, liquidation and eliminate some of the "short circuits" that could affect these restructuring measures.

Key words: Division, Merger, Liquidation, Acquisitions

JEL Classification: G34, H7, H25, M41, M48

1. Introduction

Market value of mergers and acquisitions doubled last year to $788 million, although the number of transactions decreased from 2011, according to Ernst & Young M&A Barometer, which estimates for this year market growth in the financial sector and renewable energy. Thus, the market grew by 106% compared to 2011. Although the number of transactions declined slightly in 2012 (114 transactions in 2012, compared to 120 in 2011), growth was ensured by doubling average transactions.

2. Merger and Acquisitions Market in Romania

Despite the macroeconomic situation and political uncertainty in 2012, the market for mergers and acquisitions had a good year outcome based on the few representative transactions in sectors such as agri-business, e-commerce, renewable energy and real estate. Investments in this period came from the U.S. (eight transactions), France (five transactions), Cyprus and the UK (four each transaction), Germany and Canada (three). Germany, traditionally the main investor was replaced by the U.S.

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Table no.1 - M&A in 2012. Largest transactions

Target company	Buyer company	Deal value (USDm)
Oil Factory (Lehliu Gară) owned by Prio Foods	Bunge	65.6
Rombat	Metair Investmens	52.0
Tractorul Industrial Area	Auchan	32.7
MKB Romexterra Bank	PineBridge Investments	32.7
Vulcan platform	Benevo	30.5
Pterom LPG SA	Crimbo Gas International	25.2
City Business Centre Timisoara	New Europe Property Investments lpc	21.7
Romaltyn Minning and Romaltyn Exploration	SAT & Company	20.0
Ejobs.ro	Ringier Group	16.3
Celrom	Alpha Construct Sistem	13.5

Source: Ernst & Young M&A Barometer 2012

There was no Romanian investment abroad (outbound), indicating that local players are more focused on strengthening business in the country. The most attractive sectors, depending on the value of transactions announced were the real estate, retail, manufacturing, food and energy and mining.

The year 2012 (till now) marked a rise in the number of transactions with strong companies, but continued the trend outlined in 2010 and 2011, when companies in insolvency or difficult situations dominated local transactions.

If in 2011 the Romanian market M & A (mergers and acquisitions) was divided equally between foreign investors and domestic, in 2012 foreign investors had 54% of the market, which indicates an increasing interest them in the Romanian market, they continue monitoring Romania in search of attractive targets. However, the percentage of private equity investments in the number of transactions fell from 35% in 2011 to 18% in 2012. This indicator emphasizes the difficulty investor to identify interesting targets to measure their portfolio in Romania, but their focus on the sale of portfolio companies held long. In 2012, we have seen a dynamic higher in market M & A to continue in the beginning of the year.

This development will be supported by the expected political stability and restart the privatization process and the transactions expected in the financial sector and renewable energy. Thus, one of the largest transactions in 2012, excluding transactions involving assets in several countries, were taking fertilizer manufacturer ***Azomureş*** of ***Ameropa Holding of Switzerland*** for 250-300 million and buying online retailer of electronic products ***Emag*** by Americans from ***Naspers*** for $ 83 million (about 63 million euro). Third, that the transaction value is ***Liberty Center*** mall sale for 60 million, followed by taking oil factory ***Lehliu Station*** from ***Prio***

Foods, the U.S. group ***Bunge***, 65.6 million dollars transaction (see **Table no.1 - M&A in 2012). Largest transactions**).

3. Accounting and fiscal issues for Merger and Acquisitions

Romania has experienced a major decline in the number of acquisitions both in terms of size and volume, while the number of mergers increased. This was caused mainly by difficult conditions that make it more difficult to access funds with financial leverage. High expectations of sellers on final earnings are in contradiction with the fact that investors hope to conclude transactions as convenient financially, which lead to prolonged negotiations and the conclusion of a smaller number of transactions.

The legal framework for transactions relating to mergers and acquisitions is rather limited, including Company Law 31/1990 and Order 1376/2004 (on Recognition of major merger, division, liquidation of companies, and withdrawal or excluding associates of the companies and their tax treatment). Mergers and acquisitions involving at least one listed company must comply with the provisions of Law 297/2004 on the capital markets and the regulations issued by the National Securities Commission of Romania (NSC).

Divisions, mergers and liquidations still raises many questions for those who are interested to participate in such a process. Taxable period ending where divisions or mergers which have legal effect termination of legal entities by dissolution without liquidation of one of the following data:

a) the date of registration in the commercial register kept by the competent courts the new company or the last of them, to the formation of one or more new companies;

b) the date of registration decision last general meeting which approved the transaction or other date fixed by agreement where it states that the operation will take effect according to the law;

c) The date of registration of the legal entity established under EU legislation, where Merger is also is legal;

d) The date established by law, in cases other than those referred to in points a), b) and c). In case of dissolution followed by liquidation of taxpayer's taxable period ends on the date submitting financial statements to the register where it was registered, by law, establishing it.

The merger / division takes effect when:

a) for the establishment of one or more new companies at date of registration in the register trade the new company or the last of them;

b) in other cases, from the date when the decision last general meeting which approved operation except that, by agreement stipulates that the operation will take effect on another date, but cannot be further end of the current financial year acquiring company or the recipient company or the conclusion of the last financial ended the company or companies that transfer their heritage.

Border merger effect when:

a) for setting up a company after its registration in the commercial register; b) if the merger by absorption of registration in the commercial register of the instrument modifying the articles of incorporation, except that, by agreement stipulates that operation take effect at a later date, but cannot be further closure of current financial companies receiving or acquiring company or the conclusion of the last financial year ended the company or companies who transfer their assets, and control delegated judge;

Thus, the legislature has already covered the fact that, legally, merging / division take effect on the date of registration decision last general meeting which approved operation or any other date agreed by the parties, for situations that do not require one or several new companies. New tax provisions come and set a date for the end of the period taxable date on which the merger / division takes effect.

Moreover, the legislature has introduced separate legal regulations where fusion it is a European company. Therefore, the new tax provisions governing separate this and set the date for the taxable period on registration of the European company - the date on which the merger takes effect.

Before the December 2009 legislative amendment, the Tax Code provides rules for that the taxable period ends, if a taxpayer liquidation once the date of cancellation of register which registered its establishment. The date of cancellation raises numerous issues related to tax liabilities of a taxpayer in the period between the date submitting financial statements to the registry and that cancellation date, for example:

- What is a taxpayer tax liabilities in liquidation between submission of statements financial record and the date of cancellation?
- The tax due in this period?
- What statements submitted during this period?

To clarify these questions, the new tax provisions establish that the period taxable legal persons in case of cessation of existence by dissolution followed by liquidation considers ending date of the financial statements in the commercial register.

4. Conclusions

Regarding the treatment of the merger and acquisition operations we observe major differences between the national and international regulations, the national ones being characterized by a higher degree of option, decision-making at the latitude of the participants in the merger, and international regulations having a more restrictive degree depending on certain given situations.

From the analysis of different merger operations developed on the Romanian market the greater level is of mergers achieved for administrative reasons, with the purpose of making the activities of the mergers more effective as a sequel of the identification of the main objects of activity of the entities participating in the merger, subsequent to the existence of the same structures of the shareholders of the participating entities and their administration.

Thus, the purpose of the operations of merger is: to ensure the reduction of administrative expenses, the increase of the specific costs (personnel in various specialities, space maintenance, utilities); to ensure cash flow so that it should allow paying in time the fiscal bonds and company's debts, and an also simplifying bookkeeping. In the case of these specific typologies with mergers, evaluating the elements of assets and liabilities of the entities has been based on the utilizing of the accounting values, and the exchange report has been in many cases established on negotiations or an exchange report 1:1 has been chosen.

Another specific typology that has stood out in time was the merger – acquisition characterized by the fact that at first stage there take place mergers after which participating entities remain separated legally, and then takes place the last acquisition by which we can emphasize two situations: either the buying entity survives and the bought one disappears (absorption) or the buying entity holds 100% the bought entity, but neither disappears (acquisition). This typology of mergers has been used in the case of large entities with a more diversified structure of the shareholder board and the reason for them was obtaining control in the initial stage in order to facilitate the merger.

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