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THE DEVELOPMENT OF TAX-EFFICIENT FINANCE IN THE CONTEXT OF GLOBALIZATION: PRINCIPLES AND CATEGORIZATION, OPPORTUNITIES AND LIMITATIONS – A FEW TYPICAL EXAMPLES

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Abstract. Tax-efficient finance encompasses the financing and investment structures simultaneously allowing for a lower cost of funds and a higher return to the involved parties respectively. Despite certain caveats such as the need of tax rule stability and the risk of scrutiny by the competent tax authorities, those structures have been increasingly flourishing globally in recent years due to several factors, most noticeably the lack of international – and even European – tax harmonization, the dynamics of innovation in the financial and bank markets, and – last but not least – the ever growing demand of net value creation by shareholders and other investors across the board.

Based on doctrinal and technical sources as well as on broad practical experience mostly but not only in Europe and in the US, this article presents the principles of tax-efficient finance, with the key concepts of tax benefit transfer (TBT) and tax arbitrage opportunity (TAO), proposes a tentative categorization of the main structures used in that field, in particular with the key distinction between the structures based on permanent tax savings and the structures based on tax deferrals, and reviews several examples in greater detail to illustrate the mechanics, benefits and degree of tax risk exposure of various categories of structures, with a focus on corporate tax optimization, mostly on an international and a so-called cross-border basis (ie using the rules of at least two distinct jurisdictions in a symmetrical or complementary manner), but also with occasional references to a purely domestic (ie national) approach of tax efficiency. A link is established with the broader field of structured finance which tax-efficient finance may be connected to, due to its frequent use of special-purpose vehicles (SPVs) and limited recourse provisions.

The article concludes that despite a higher degree of transparency of the most recent structures and a higher albeit complex degree of cooperation between the various national tax authorities, tax-efficient finance is likely to keep reasonably strong development perspectives as long as the main "rules of the game" in global financial markets remain unchanged.

JEL Classification: H210, G320.

Keywords: optimisation finance, tax arbitrage, financial globalization, structured finance, cross-border structures, pre-tax cost, after-tax return, tax risk, task ruling, innovation.

Reikšminiai žodžiai: optimizaciniai finansai, mokesčių arbitražas, finansų globalizacija, struktūriniai finansai, kryžminės struktūros, ikimokestinės sąnaudos, įplaukos atskaičius mokesčius, užduočių valdymas, inovacijos.

1. Introduction

Globalization provides a favourable context for flexible, innovative use and arbitrage of tax rules in financial transactions internationally, as a response to shareholders' growing demand for value creation.

Over the past twenty years, a particular field of structured finance often called tax-efficient finance – although there are other titles such as structured tax products or optimization finance or tax and financial engineering… – has known a fast-growing development globally, mostly in the corporate and investment banking

divisions of international institutions and in the corporate finance advisory divisions of large consulting firms.

Thus they are mostly serving their corporate, institutional and private clients' specific needs, although occasionally banks are also facing one another in those tax-efficient finance transactions (then acting on a so-called "principal-to-principal" basis).

As the key purpose of that type of financial transactions is to provide a higher return on an after-tax basis and/or a lower cost on a pre-tax basis to the involved parties, the context explaining and justifying their fast development is a combination of:

i) the increasing demand for shareholder value creation across the board – that is not only through the ongoing performance of a business model but also when available through the use (subject to various limitations) of all appropriate financial, legal, tax, regulatory, accounting and assets-liabilities management techniques – and

ii) the trend of financial globalization providing a wide spectrum of new arbitrage opportunities because transactions can be flexibly structured not only on a strictly domestic, national basis, but also, increasingly on an international, offshore and/or so-called cross-border basis allowing to "pick and choose" the optimal tools in a variety of jurisdictions distinct from the country of each contracting party (for instance a European participant will benefit from an efficient legal and tax structure in the US or in Asia, a US participant will benefit from an efficient European regulatory and financial rule, and even within the European Union (EU) – as long as it remains far away from a comprehensive harmonization of its internal rules in a number of areas, and in particular in the tax field of tax (where unanimous decisions are required) – two parties will be allowed to efficiently utilize a European third party country's rules when appropriate, if they provide a higher benefit or sometimes just a greater flexibility than their respective domestic rules for a given purpose).

Hence a strong dynamics for tax-efficient finance globally despite a couple of caveats…

At this stage it is worth noting that even though the motivations are strong and the context is favourable for the reasons described above, one key caveat of the dynamics of tax-efficient finance transactions globally is that, as they depend on specific rules and the possibility to arbitrage them, from one country to another, at a given point in time and for different periods, based on a certain status of the parties, those transactions are highly contingent upon the stability of the rules and one single change may be sufficient to stop new transactions or even justify the early termination of existing transactions.

Another key caveat is that even if the rules are unchanged, a given structured transaction may be challenged by the competent authorities (even several years later) on the grounds of (among others) re-characterization or abuse of law, and that risk is particularly present in the field of tax-efficient financial transactions, although in some (rare) cases it is possible to seek protection against it through obtaining a so-called "tax ruling" i.e. a written approval by the competent tax administration before the transaction is actually consummated. In most cases though, no absolute protection will be available and safety will be sought through careful documentation of the transaction and strong legal and tax opinions by reputable law firms demonstrating that a given transaction has been properly structured in compliance with all relevant existing rules and in reference to appropriate court decisions if any.

2. A comprehensive Definition and Tentative Categorization of Tax-Efficient Finance Transactions

A comprehensive definition and tentative categorization of tax-efficient finance transactions, diversified though as they may be, and the link with structured finance…

Although there may be a limited number of exceptions to any effort of classification or categorization of those tax-efficient transactions, due to their intrinsic customized nature, along with their frequent sophistication, it is possible:

i) to provide a generic, systematic definition of those transactions, whereby they all consist in a financing/investment structure or instrument which, through the efficient use of one or more favourable tax rule(s) – often called a "tax window" for that reason – allows for a lower cost of funds on a pre-tax basis for the issuing/borrowing party and simultaneously a higher return on an after-tax basis for the investing/lending party than the corresponding standard, ie non tax-oriented transaction for a similar risk and maturity – often called the "benchmark" structure or "benchmark" instrument for that reason – as well as

ii) to distinguish two essential families among them, either based on the concept of "tax benefit transfer" (TBT) between two parties

having symmetrical, opposite tax positions, typically where one party has substantial taxable income – generally called tax capacity in this field – while the other party has current or past tax losses – generally called a lack of tax capacity or no available tax capacity or also a negative tax capacity in this field; or based on yet another concept of "tax arbitrage opportunity" (TAO) using the hybrid nature of a given structure or instrument between two or more appropriate parties and/or jurisdictions (eg the structure or instrument will be simultaneously analysed as debt from one prospective and equity from another prospective, with two different and favourable tax treatments from each prospective as a result)

iii) to indicate furthermore, although this additional statement is subject to more exceptions and special cases, that most frequently tax-efficient finance transactions will use the two most commonly utilized tools in structured finance, namely a special-purpose vehicle (SPV) and the limited recourse provision, respectively with a view to legally isolate each particular transaction on a stand-alone basis from the various parties involved and to limit or cap the possibilities of recourse to what is exactly intended between the parties given the specific purpose, no more and no less

iv) to finally mention that even though it is possible to envision optimization techniques relative to virtually all categories of direct and indirect taxes, yet tax-efficient finance structures are mostly based on income tax, that is corporate tax in the case of institutions (and personal tax for individuals). This means that in a typical TBT-oriented structure for instance, the issuing/borrowing party will benefit from a lower cost of funds on a pre-corporate tax basis (also called gross basis), whether such cost itself is or is not tax deductible, and the investing/lending party will benefit from a higher return on an after-corporate tax basis (also called net basis).

3. Dividend-related Tax Credit Sharing: a Simple and Common Case of Tax benefit Transfer (TBT)-based Transactions

To start with a simple and commonly used illustration of TBT type transactions in many countries, both on a domestic and cross border basis, the temporary transfer of tax credits attached to dividends payments may be mentioned. Because dividends on shares are paid by companies out of after-tax profits, most jurisdictions provide the recipient with some form of tax benefit, often through a tax credit mechanism, so as to avoid double taxation at the company's level and subsequently at the shareholder's level. However, when the only way to get effective advantage from the tax credit is through deducting it from the taxable income derived from other sources, the recipient will need to have excess tax capacity. Otherwise, the value of the tax credit would be lost, except if the recipient finds a bank or another taxable organization which will temporarily purchase the underlying shares at a slight premium above their fair price shortly before the dividend payment date with the tax credit attached, will thus deduct it from its own taxable income and will then sell back the shares at the same price to the original holder, for whom the premium received reflects a cash portion of the value of the tax credit deduction transferred to the taxable party, hence the notion of TBT in this type of transactions.

The reason why the original holder may lack the required tax capacity to directly take advantage of the tax credit and has to transfer it to a qualified taxable party is i) either because it carries past or current tax losses, or ii) because it legally benefits from a non taxable status, or alternatively iii) because, if it is a foreign resident, it may have no other income coming from the dividend source country. That is why those commonly used TBT type transactions may be implemented both on a purely domestic basis or an international cross border basis.

However the very description of them, with their structurally reversible, temporary and short term nature, shows clearly that albeit they do illustrate an easy case of TBT technique, they remain far away from a real financing/investment transaction and therefore cannot be considered as a comprehensive, full- fledged, typical example of tax-efficient finance.

4. Domestic and Cross-border Tax Lease Financings as a Broader and More Typical Illustration of TBT-based Tax-efficient Finance Transactions

On the contrary tax lease financings which are or have been in use in a large number of countries as an equipment financing technique provide a very typical illustration of tax-efficient finance inclusive of most of the features above, not only the TBT element. They operate as an alternative to equipment loans and consist in allowing an institution – the lessee – which either because of its non taxable status or because of past or current

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tax losses has no tax capacity, to have exclusive use of a given equipment for operating purposes under a lease contract transferring the ownership of the equipment via a tax-transparent SPV, namely a tax conduit, to one or several other institutions – the lessor(s) – having excess tax capacity, which will be reduced thanks to the deduction from the corporate taxable income of the equipment depreciation allowances and of the interest expense on the loan raised by the SPV for acquiring the ownership of the equipment. Such structured loan will be provided by either banks or other institutional lenders with a recourse limited to the value of the asset generally through a legal lien or first security interest in it, and to the future expected rental or lease payments owed by the lessee, by the means of an assignment, as opposed to a full or general recourse against the lessee's overall financial standing (as would be the case in a regular straight corporate loan).

In an initial phase, the annual amount of permitted deductions is higher than the annual amount of taxable lease revenues so that the SPV mechanically shows a tax deficit resulting in tax savings for the lessor(s) who in turn will pass some of it back on to the lessee in the form of reduced rentals compared to what they would be at normal market conditions without a TBT effect, that is what they would be under a benchmark structure.

Hence a short general definition of any tax lease financing is a structure whereby thanks to a TBT arrangement permitted by tax rules in a given country the lessor(s) will pay less corporate tax and the lessee will pay lower rentals compared to a benchmark lease structure.

In a second and final phase though, as both depreciation allowances and interest expense get smaller and smaller over time, the annual amount of permitted deductions is lower than the annual amount of taxable lease revenues so that the SPV mechanically shows a taxable profit until the maturity of the transaction, which will translate into higher corporate tax payments for the lessor(s). Yet what matters effectively is that on a combined basis the net present value (NPV) of the initial tax savings and the final additional tax payments is vastly positive, often representing 5% to 10% or more of the purchase price of the leased equipment, and it is that advantage – sometimes called the "tax cake" – which is shared with the lessee in the form, as we said, of reduced rental payments.

5. Distinct Features of Tax Lease Financings as Opposed to Other Typical Tax-efficient Finance Transactions

Distinct features of tax lease financings as opposed to other typical tax-efficient finance transactions: tax deferral rather tax deduction, "benign neglect" or even formal approval from tax authorities, and sometimes a macroeconomic policy incentive instrument…

Thus described, tax lease structures show several interesting distinct features compared to other widespread tax-efficient finance transactions:

- The tax benefit they generate is of a temporary nature not a permanent one, because it is actually a tax deferral not a final tax deduction as calculated over the entire life of the transaction; as we will see below, other typical examples of tax-efficient finance structures are based on permanent, irrevocable tax deductions
- For that reason, in many countries, the tax administration have been "benign", indifferent, and sometimes even favourable to tax lease transactions although the value of the tax benefit they trigger may be quite significant to the private parties, but again, translating into a mere delay, a deferral of tax revenues, not a final loss thereof, for the Treasury
- Furthermore, by nature, because they provide an attractive, flexible equipment financing for both large and small companies, tax leases support and stimulate the corporate demand for capital expenditures and hence are good for the economy as a whole, for the GDP growth, they are seen therefore as a kind of useful tool for macroeconomic policy purposes, in more or less the same way as accelerated tax depreciation, and sometimes super-accelerated tax depreciation is permitted by tax administrations to encourage companies to spend more on industrial, transportation, anti-pollution, high-tech and research-development–oriented equipment; hence that favourable depreciation regime will of course reflect in a tax lease financing of those types of equipment mechanically through the TBT technique
- For those reasons, tax leases are one the very few examples of tax-efficient finance transactions where in many countries a tax ruling, that is a written approval in advance may be obtained relatively easily, albeit still on a case-by-case basis, from the tax administration, thus removing the related tax risk for the private parties, for instance in France, where rulings in other areas are extremely scarce and difficult to obtain; or where an entire industry is based on providing tax lease solutions to a vast corporate clientele, just using common law and common tax rules, with no or virtually no tax risk whatsoever, as has been the case in the USA for deca-

des (in this country, dozens of billions of US dollars worth of corporate equipment every year have been financed through the US tax lease system, and this is also extended to the refinancing of used equipment through so-called tax-efficient sale-leaseback solutions)

– Finally tax leases, for the same reasons there again, have also provided a typical international example of repeated, stable and safe cross-border applications of tax-efficient finance applied to exported equipment until recently, in the form of so-called "multiple-dip leasing" structures between two or more countries where their respective laws and rules are such as they provide the opportunity for two or more tax owners/lessors to simultaneously claim the benefit of depreciation ("dip") allowance deductions for the same leased equipment and for the same user/lessee through an appropriate tax conduit SPV in each country. For instance since the mid-80s many European aircraft have been sold to US airline companies under a so-called French-US "double dip" lease financing structure, with the combined benefits of French and US accelerated depreciation ("dip") providing an even more attractive cost of funding in the form of reduced rentals to US airlines having no or insufficient tax capacity, as opposed to what they would have been in a purely domestic French or US tax lease. France has favoured those transactions for many years by granting them a number of specific tax rulings and the US has accepted them based on its common tax rules as is the case for strictly domestic leasing transactions in that country, as mentioned above. Some "triple dips" have also been seen, for instance between Japan, the US and France, but less frequently as the feasibility conditions are stricter and the implementation technicalities more complex. Cross-border tax lease structures have been increasingly scrutinized and challenged by official authorities over the past two years (despite active lobbying by the industrial manufacturers and the leasing and banking industries) because of i) their extension to existing equipment without any real financing need, where they look like a pure tax exercise with no other substance, ii) the growing perception, when applied to export items, that they operate as an indirect subsidy and hence as a distortion with respect to fair trade rules whether at the World Trade Organisation level or at the European Union level. For those reasons, and also because of their high degree of complexity and the variety of possible forms cross border tax lease transactions may take internationally and in different periods, it is beyond the scope of the present article to discuss them in greater detail here.

However cross-border tax leases may be used here as an appropriate transition to yet another species of tax-efficient finance transactions, those which utilize different rules in different countries so as to optimize the tax treatment of one given structure or instrument and generate a greater benefit to the private parties overall than the one resulting from a purely domestic application. That is why they are commonly referred to as tax arbitrage opportunity (TAO)-based transactions.

6. A Typical Case of Tax-efficient Finance Transactions Based on a Tax Arbitrage Opportunity (TAO) in the Form of Cross-border "Repos"

A typical example thereof is the so-called cross border "repos" transactions or securities-based repurchase agreements whereby an issuer will sell some form of preferred shares out of a jurisdiction where the dividend payments will be considered as tax deductible – just like interest payments – and the purchaser will be investor(s) based in another jurisdiction where the corresponding dividend income will be considered as tax exempt because of its equity-related nature. There again, the French-US case may be chosen as a typical example. In the US, because of the repurchase provision at a predetermined price (or a calculable price based on a predetermined formula), and a certain degree of automaticity of the preferred dividends at a stated (fixed or variable) rate (unlike ordinary dividends which by nature always keep a strong random element), and a few other minor (some would say "cosmetic") features, the shares are treated for corporate tax purposes as being, in substance, close to a debt financing, thus allowing the tax deductibility of such dividends from the US issuer's taxable income as is the case for interest payments. Meanwhile, in France, based on the legal form of the instrument, namely shares, the investor is deemed to receive dividend income, not interest income, hence a revenue that has already been taxed at the issuer's level and as such must benefit from a tax exemption regime so as to avoid double corporate taxation.

This very description by itself shows that those "repos" transactions are another case of "double dip" type tax-efficient finance using i) at least two different jurisdictions and ii) dual or opposite sets of national tax rules whereby the same financial instrument will be treated in two opposite ways between the two countries so as to

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maximize the tax efficiency overall, the tax benefit to the private parties, ie the issuer and the investor(s).

6.1. Two distinct features resulting in a somewhat higher tax risk as compared to tax lease financings

Yet those "repos" transactions show at least two distinct features compared to their "double dip" leasing counterparts, even though both share a key characteristic of being a financing/investment cross border structure:

- Unlike tax leasing, they are unrelated to a particular equipment acquisition and are simply a part of the issuer's general funding sources, and therefore they do not include the same manufacturing/exporting element directly favourable from a macroeconomic policy standpoint
- Unlike tax leasing, they do generate a permanent not a temporary tax savings effect to the private parties hence they are much more costly to the Treasury over time in terms of irrevocable loss of tax collections.

As a result, for those reasons, it is generally impossible to seek or expect a

favourable "tax ruling" in most countries on those "repos" transactions. Hence this is a case where the parties will have to carry some tax risk of re-characterisation or, in certain extreme cases, of abuse of law, and will try to minimize such risk with reasonable use of common rules, appropriate documentation and strong legal and tax opinions obtained from reputed law firms.

A less noticeable difference is that while tax leases are always arranged through SPVs, "repos" transactions may be directly implemented between the issuer and the investor(s), although US issuers over the past five years have increasingly used a new flexible securitization tax conduit (as defined by US laws, the so-called Financial Asset Securitization Investment Trust or FASIT) to place their preferred shares with European investors and to reinvest the cost-efficient proceeds selectively in various classes of market yield-producing financial assets qualifying for that conduit.

As a side remark at this stage, it is worth noting that the dual or hybrid treatment of "repos" transactions on a cross-border basis for corporate tax purposes – debt treatment in one country, equity treatment in another country – finds an analogy to some extent on a purely domestic basis with the tax treatment of mezzanine type instruments, ie those subordinated financing instruments such as convertible bonds, warrant bonds, and perpetuals which by nature combine debt features and equity features so that it is a way i) for issuers to strengthen their balance sheet without the dilution of a share offering and with the possibility to deduct all or part of the cost of funds from their taxable income (like interest payments and unlike dividend payments), and ii) for investors to defer all or part of their taxable income in the form of expected capital gains (albeit in some jurisdictions, like France, even deferred and uncertain income may be taxed in advance on an annual basis using specific rules of theoretical calculation).

Those domestic tax-efficient finance instruments have been developing rapidly in recent years in many countries, using a variety of flexible forms beyond the three examples mentioned above, and applying to a number of situations from bigcap and midcap issuers (without the need of SPVs in that case) to cash-flow based financings such as leveraged acquisition finance/leveraged buy-outs (LBOs) and project finance (with the systematic use of issuing SPVs in that case).

6.2. Another typical example of TAO-based tax-efficient finance transactions using international tax treaties rather than opposite sets of domestic tax rules: "Foreign tax sparings"

Finally, back to typical international and cross-border tax-efficient finance transactions using regulatory arbitrage opportunities, an entire area may be identified in the form of so-called "foreign tax-sparings" or "withholding tax credit recaptures", in situations where a double tax avoidance treaty (in short, a "tax treaty") between two countries A and B allows for the recapture in country A of a particular tax levy called a withholding tax paid in country B by a country A-based taxpayer having country B source income. The recapture generally applies to both corporate tax and personal tax, and may include a narrow or broad spectrum of revenues such as interest income, dividend income, rental income, royalties income…

Tax treaties by themselves do not create a tax arbitrage opportunity as they are simply a framework for two consenting countries to mutually exempt their respective residents from a double taxation of the same income in country A and in country B. Not all countries have entered into such treaties with other countries, but even if there was no tax treaty between A and B, there may be a tax-efficient way for their respective residents to structure a financing through a third party country C which has entered

into separate tax treaties with A and B. That technique often nicknamed "treaty shopping" which in fact is simply a smart geographic way to organize international flows of revenues based on existing tax treaties only in order to avoid double taxation may be called a "weak" or "soft" form of international tax-efficient structure.

A different use of tax treaties may be envisioned with a more powerful effect, that is the creation of additional tax value in a limited number of situations where even though a withholding tax may be recaptured in the destination income country A under a tax treaty between A and B, it has not been effectively owed and paid in the income source country B (generally as a result of a specific domestic rule in country B exempting a particular income category irrespective of the general scope of the tax treaty between A and B). For instance the interest income on certain government or private specific bonds is or used to be tax-exempt in some countries, either emerging countries or OECD countries, having entered into tax treaties with other countries whose residents as a result, if they hold or just temporarily buy those tax-exempt bonds, will be permitted to claim the recapture of the deemed withholding tax levy on all similar ordinary taxable bonds in the issuing country.

Those transactions, called "foreign tax sparings" or "withholding tax credit recaptures", as previously mentioned, used to be seen for instance between residents of certain EU countries in the years 80s and 90s until that "tax loophole" was repealed because of its extensive use in financial transactions that had no real substance, that is no motivation other than the recapture of a foreign tax credit so as to substantially enhance the yield on some short term or medium term cross-border placements for investors seeking that type of arbitrage to reduce their high tax capacity in their home country (lack of substance is generally a case where tax-efficient transactions may be challenged by the tax authorities on the grounds of abuse of law, as we said above, but this is only true on a purely domestic basis, not internationally, hence a change in the tax treaty itself must be undertaken by the involved countries in order to stop those "foreign tax sparings" transactions – and sometimes it takes several years to make that change as the entire treaty must be renegotiated between their governments and ratified in similar words by their parliaments). Those transactions are still in use in other areas such as certain Latin American countries on the issuing side and North America on the investing side when permitted by existing tax treaties.

Conclusions

Tax-efficient finance flourishing on the lack of international tax harmonization in deregulated and innovative global financial markets.

Globalization has thus offered a growing number of tax-efficient finance opportunities as a result of greater flexibility in capital circulation across the world, persistent differences in national tax regulations and faster innovation in the definition of the proper structures and instruments with all relevant tax rules but also legal, regulatory and accounting tools on both a cross-over (multidisciplinary) and a cross-border (multi-country) basis, in increasingly sophisticated and customized techniques of so-called "packaged" or "synthetic" or "structured" finance, mostly in the form of stand-alone transactions based on special-purpose vehicles and limited recourse provisions. That ongoing, almost systematic search for the optimization of all financings and all investments to make them more cost-efficient for the issuers-borrowers (reducing the weighted average cost of capital, ie a WACC effect) and more yield-productive for the investors-lenders (increasing the return on assets, ie a ROA effect), whether they relate to a specific asset or net, responds to shareholders' constant pressure internationally for higher net return on equity in free, deregulated, global capital markets, with the permanent possibility to move and arbitrage from one country to another, more specifically from one marketplace to another, from one company to another. It may be seen as an overall tax planning strategy which participates in the assessment of the best possible financing and investment avenues on each occasion in the fine-tuned, detailed, rigorous operation of the companies' business models beyond the fundamentals thereof.

Yet there are limitations and constraints in that tax-efficient finance engineering exercise, as we have seen, because few transactions may benefit from a formal approval by the competent authorities in the form of tax rulings, and most transactions face some degree of risk in terms of re-characterization or abuse of law, with additionally the possibility at any time that changes in the rules and regulations may force the early termination of certain existing transactions and stop any new such transactions.

However, as tax-efficient finance structures and instruments have kept on growing and spreading over the past twenty years, it is clear that private agents – companies, banks and other institutions, financial advisors and lawyers – have always been able to respond to those limitations, constraints and risks (and even sometimes to anticipate them through adequate

"tax intelligence") with a permanent ability to adjust and innovate.

Therefore as long as no tax harmonization prevails among the nations – even within the EU – and…we are still far away from it (not to mention the ongoing tolerance of zero-tax countries or so-called "tax heavens"), it is very likely that tax-efficient finance transactions in free global capital markets will continue to flourish.

References

1. A Different Sort of Investor (January 2005). *Aircraft Finance Journal*.
2. Boobyer C. (2003). *Leasing and Asset Finance*, Fourth Edition, Euromoney Books, London.
3. Caselli S., Gatti S. (2005). *Structured Finance: Techniques, Products and Market*, Springer, Berlin.
4. Changing the Game (January 2006). *Air Finance Journal*.
5. Cross-Border Lease Financing, (February 2008). *Journal of Structured Finance*.
6. Engelen F. (2004). *Interpretation of Tax Treaties Under International Law*, Doctoral series, IBFD Publications, The Netherlands.
7. European Commission President Opposes Tax Harmonization, (February 2005). *Australasian Business Intelligence.*
8. European Innovators, (March 2001). *Air Finance Journal*.
9. Fabozzi F. J., Nevitt P. K., (2000). *Equipment Leasing*, Fourth Edition, FJF Associates, Pennsylvania, US.
10. Hall S., Littlejohns A., McGairl S., (1998). *Aircraft Financing*, Third Edition, Euromoney Books, London.
11. Income Tax Discrimination and the Political and Economic Integration of Europe, (April 2006), *Yale Law Journal*.
12. Keeping the Faith, (January 2008), *Air Finance Journal*.
13. Lessors Look on the Bright Side, (March 2003). *Air Finance Journal*.
14. Thompson S. C. Jr, (2007). *US International Tax Planning and Policy*, Carolina Academic Press (US).

VEIKSMINGAIS MOKESČIAIS GRINDŽIAMŲ FINANSŲ PLĖTRA GLOBALIZACIJOS SĄLYGOMIS: PRINCIPAI, KATEGORIJOS, GALIMYBĖS IR APRIBOJIMAI

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Santrauka. Veiksmingais mokesčiais grindžiami finansai leidžia investuoti mažesnėmis sąnaudomis bei užtikrinti didesnę grąžą. Jų sistemos plėtojamos nepaisant nepakankamo tarptautinio mokesčių derinimo bei finansų rinkų inovacijų. Šis straipsnis grindžiamas publikacijomis ir praktine patirtimi šioje srityje, jame plėtojamos mokesčių naudos pervedimo bei mokesčių arbitražo galimybių kategorijos, taip pat skiriamos finansų struktūros, grindžiamos nuolatiniu mokesčių taupymu ar jų atidėjimu, atsižvelgiama į mokesčių riziką. Net esant skaidrioms plėtojamų finansų struktūroms, veiksmingais mokesčiais grindžiami finansai gali būti racionaliai plėtojami tol, kol išlieka nepakitusios globalių finansų rinkų veikimo taisyklės.

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