# TAX AND ACCOUNTING PROCEDURES IN THE MERGER OF INSURANCE COMPANIES*

**MARINA UHER, CRISTINA NAGY, BOGDAN COTLEŢ**
WEST UNIVERSITY OF TIMISOARA, FACULTY OF ECONOMICS AND BUSINESS ADMINISTRATION, 16 J.H.PESTALOZZI STREET, TIMISOARA. 300115, ROMANIA
uher.marina@yahoo.com, cristinanagy2009@yhoo.com, toldo_bogdan@yahoo.com

***Abstract:***
*The merger project summarizes all of the aspects of the new insurance company, by jointly commissioning the assets, capital and markets, aiming to achieve a new company with a larger client portfolio, with increased financial stability and profits. By presenting the main tax and accounting procedures for the merger of the insurance companies, we are going to highlight the main accounting operations determined by the merger and the tax implications of these operations, in terms of the original companies, but also the newly created insurance company, resulted from the merger.*

***Key words:*** *the merger, insurance companies, tax and accounting procedures*

***JEL classification:*** *M41, G22*

## 1. INTRODUCTION

The merger of the insurance companies has begun as a significant strategic option on the insurance market, in a more and more challenging economic climate in which the insurance companies must think on some means by which they can perform the best possible investments.

On the Romanian insurance market fusions and divisions of the insurance and reinsurance brokers are performed with the approval of the Insurance Supervisory Commission considering the observance of title VI –chapter II provisions within the republished Law no. 31/1990 on the trading companies, as subsequently amended and supplemented, and the observance of the Order no. 113112 from 23rd June 2006 on the enforcement of the Standards regarding the approval of the insurance and/or reinsurance brokers merger/division.

## 2. MERGER AS A CONCEPT

The merger operations are legally governed through Law no. 31/1990 republished Law no. 31/1990 on the trading companies, as subsequently amended and supplemented.

According to Law no. 31/1990[1], merger represents the operation by which one or more companies are dissolved without entering the winding-up process and it transfers their total assets to another company in exchange for the assignment towards the shareholders of the absorbed company or companies to the absorbing company and,

* "This article is a result of the project **"Creşterea calităţii şi a competitivităţii cercetării doctorale prin acordarea de burse"**. This project is co-funded by the European Social Fund through The Sectorial Operational Programme for Human Resources Development 2007-2013, coordinated by theWest University of Timisoara in partnership with the University of Craiova and Fraunhofer Institute for Integrated Systems and Device Technology - Fraunhofer IISB."

[1] Law 31/1990 – Trading Companies Act, art. 238, updated in 2010

eventually, for the maximum 10% cash payment at the par value of the these assigned shares.

Precupeţu E.[2] considers that "merger is the operation by which a centralization of the trading companies is made" and these can have the same legal status or different statuses.

Taking into account the provisions of the above-mentioned order, the insurance and reinsurance brokers' merger is performed when the merger takes place between two or more brokers and the demand on the minimum share capital is made after merger.

In order to approve this merger, the brokers are bound to submit the documents provided by the above-mentioned order to the Insurance Supervisory Commission, and it shall judge it by means of a reasoned decision within a term of 45 days after the application reception.

After the fulfillment of the formalities related to the approval, there shall start the publication operations provided by law, respectively the publication of the merger project in the Official Gazette of Romania in compliance with the provisions of the Law no. 31/1990.

Considering the adherence of Romania to the European Union on January 1st, 2007, the Romanian insurance companies received the possibility of becoming European insurance companies complying with the OG 52/2008 and (EC) Regulation no. 2157/2001 of the European Council from 8th October 2001 on the statute for a European company (SE).

Therefore in the event of merger with another insurance company within the member states of the European Union this operation could be performed only with the observance of the competition rules established by the treaty.

Provided that within the European Community Regulation on the statute of the European companies, the legal framework in which these must develop their activity is mainly based on the internal legislation of the state in which the European insurance companies have their headquarters, the companies shall be supervised by the insurance supervisory commissions created at the level of each state.

Hence, at the incorporation of a European company (SE) through merger, the merger procedure through absorption must be also effectuated in accordance with the article 3 paragraph (1) in the Council Directive 78/855/cee of 9th October 1978 and on the grounds of article 54 paragraph (3) letter (g) of the treaty, regarding the mergers of the anonymous companies in the case of the merger procedure through the incorporation of a new company in accordance with the article 4 paragraph (1) of the directive in question.

The merger procedure of the trading companies has as main document the merger project which is drawn up by the executive or management boards of the insurance merging companies and in case of the European company it must include the elements required by the respective regulation:

- the name and registered office of each company which amalgamates, as well as those envisaged for SE.
- the stock exchange report and in certain circumstances, the balance due.
- the transfer ways for the shares SE.
- the date on which these shares give right to dividends.
- the date on which the operations of the merging companies are considered to be performed by SE from an accounting point of view.
- the rights granted by SE to the shareholders who benefit by special rights or measures suggested regarding them.

---

[2] Precupeţu, E., *„Despre fuziunea societăţilor comerciale"*, Revista de drept comercial nr. 6/1993

- any special advantage granted to the specialists who examine the merger project as well as to the members of the management, executive, supervisory or control boards of the merging companies.
- SE statute.
- information regarding the procedures of the employees' involvement on the grounds of the Directive 2001/86/CE.

The merger project must be published under the shape provided by the legislation of each member state in accordance with article 3 in the Directive 2009/101/CE for each of the merging companies, at least a month before the date of the General Shareholders' Meeting which is to judge on the merger project.

A significant mention can be found in Title IV of the Official Journal of the European Union, in article 62, paragraph 2 which states that a SE "which is an insurance enterprise, is ruled by the standards determined in the internal law of the member state on whose territory the SE registered office is for the enforcement of the Directive 91/674/CEE of the Council from 19th December 1991 on the annual accounts and the consolidated accounts of the insurance companies concerning the annual accounts drawing up and, as the case may be, the consolidated ones as well as the annexed management report drawing up, the auditing and publication of the accounts in question."[3]

## 3. ACCOUNTING AND FISCAL PROCEDURES REGARDING MERGER

In the Romanian legislation on the trading companies we shall meet the same model of merger project which is drawn up between two or more insurance companies which want to merge complying with the legal conditions required by the Romanian Insurance Supervisory Commission and the trading companies' act.

Being treated by many economists as an acquisition, the mergers may be performed in two ways:

- Merger through absorption;
- Merger through amalgamation or consolidation;

**Merger through absorption** consists in the absorption of one or more trading companies by another trading company.

**The accounting procedures** made on the occasion of a merger through absorption are the following:

- Stock-taking and assessment of the assets and liabilities of the trading companies, in this case the merging insurance companies according to Law no. 82/1991 on the stock-taking compulsoriness on the merger date and complying with the Order no. 2861/2009 on the stock-taking performance method.
- Registering the results of the stock-taking and assessment performed on this occasion;
- Drawing up the balance sheet before merger for the companies which are to merge provided that the acknowledgement and assessment of the assets elements be performed in a credible way and the assets bring future economic benefits to the new company;
- The overall assessment of the companies and the determination of the net contribution which is calculated on the basis of the data from the balance sheet drawn up before merger.

NET ACCOUNTING ASSETS=TOTAL ASSETS – TOTAL LIABILITIES

---

[3] EC Regulation no.2157/2001 of the Council from 8th October 2001 on the statute for a European company (SE)

The enforcement of various calculation methods for the net assets is allowed, respectively:

- The patrimonial method or the net assets' method;
- The stock exchange method;
- The method based on results (the value of profitability, the value of efficiency, the value of superprofit);
- Mixed methods;
- Methods based on the cash-flow.

All these methods determine the calculation of the overall value concerning the merging company, respectively the calculation of the merger net contribution value in order to calculate the exchange report.

The net accounting value and the net contribution value are equal in the case in which the company chooses the overall assessment patrimonial method as calculation method.

When the two methods chosen are not equal, the differences are acknowledged as loss or earnings elements, being registered in the operating expenses or income accounts, in the profit or loss account or in the retained earnings.

- The determination of the stock exchange report in order to cover the capital of the absorbed trading company; within this stage, it is determined the accounting value of the merging companies' shares by reporting the net contribution to the issued number of shares and the determination of the stock exchange report which is made by reporting the accounting value of an absorbed company share to the accounting value of the absorbing company , a report which is checked under the terms provided by the Trading Companies' Act no. 31/1990 which are checked and approved by specialists.
- The determination of the number of shares issued in order to be able to calculate the merger contribution consists in three stages as it follows:
    - The determination of the number of shares which has to be issued by the absorbing company; the used methods may be the reporting of the absorbed company own capital to the accounting value of an absorbing company share or the multiplication of the share number with the exchange report;
    - The increase of the share capital at the absorbing company by multiplying the number of shares which must be issued by the absorbing trading company with the par value of a share;
    - The calculation of the merger premium as difference between the accounting value of the shares and their par value.

From the point of view of the **fiscal procedures** which both the absorbed and the absorbing companies are submitted to, these are the following:

- The incomes and expenses made by the absorbed company through the assets transfer are the non-taxable incomes and similarly, the expenses are non-deductible expenses in accordance with the provisions of the Fiscal Code and they are registered through the operating expenses and income accounts;
- The absorbed company transmits to the absorbing company the fiscal value of each element of assets and liabilities; the fiscal value of the amortizable fixed assets shall be taken into account, discounting the accounting value; they are to be amortized during the normal left period;
- According to the provisions of the Fiscal Code, we shall take into consideration the reduction or annulment of the provisions and reserve which were deducted at the calculation of the taxable profit, in the case in which these were deducted at the calculation of the taxable profit, there shall be recalculated the tax on income which the absorbed company shall pay to the state budget;

- The absorbed company is bound to submit the tax return and to pay the tax on income with 10 day before its termination;
- The absorbing company shall be unable to take the fiscal loss registered by the absorbed company;
- The absorbing company shall use at the calculation of the gross/taxable profit, the fiscal values of the assets and liabilities sent by the absorbed company and if these are unknown, the value of the assets and liabilities for the absorbing company is zero;
- In case in which the absorbing company has taken both provisions and reserves from the absorbed company and these were fiscally deductible at the absorbed company, the absorbing company is bound to calculate and transfer the tax on income to the state budget;
- We meet a special case when the legal reserve exceeds a fifth of the subscribed and paid up capital, the difference shall not be treated as a gross income as long as this reserve is conserved at the resulted value, the decrease of the legal reserve is a gross income, the subsequent reconstitution of the legal reserve being fiscally deductible.

**The merger through amalgamation** is also called **merger through consolidation** by the specialty literature, and according to some authors[4], "it consists in the reunion of two or more trading companies wind–up through the incorporation of a new trading company."

In the case of the merger through amalgamation, the companies amalgamate in a new company, the initial companies winding-up their legal personality and the shareholders of the initial companies receive shares at the new incorporated company in the exchange of the winding-up companies' shares.

They may choose for the cash payments on the account of their shareholders' rights or to get bonds issued by the new company.

There has been noticed that at the international level, the absorptions are more frequent than consolidations because it is difficult to perform a merger in the absence of a unification of the existing articles of association and rules in different countries.

The merger through amalgamation is performed through the same **accounting procedures** as the merger through absorption, respectively the stock-taking and assessment of the assets and liabilities elements, the drawing up of the merger cases and the determination of the own capital and the net assets.

The trading company which has resulted from the merger is based on the net assets or the own capitals of the merging trading companies and it determines the number of shares by reporting the own capital to the par value of a share, and the contributed capitals as well as the rights and obligations of the trading companies which are winding-up, shall be also reflected in the bookkeeping.

**From the point of view of the fiscal treatment** to which the winding-up companies are submitted and the new incorporated one as a consequence of the merger follows the same fiscal treatment as in the case of the merger through absorption.

The merger between two insurance companies brings the consolidation on the market for the company resulted from the merger and the new incorporated insurance company varies its product portfolio and last but not least the taxation, the grouping of various insurance companies may bring tax advantages.

## 4. CONCLUSIONS

The effects of the enterprises' merger are the following: the dissolution without winding-up for the enterprises which cease their existence; the transfer of assets (assets and liabilities) of the winding-up enterprises to contribution beneficiary enterprise; the

[4] Cărpenaru , Stanciu D., - *Drept comercial român*, Allbeck Publishing House, 2001

acquiring of the shareholders capacity in the contribution beneficiary enterprise by the partners of the dissolving companies.

The amplification of the insurance market through the fact that it is performed on a broader beach of customers and on a geographically wider surface in certain cases; when the insurance company is in difficulty she can be saved from bankruptcy.

As a consequence of the merger, a reduction of the costs is made by decreasing the personnel costs and an increase of the incomes by taking over the customer portfolio from the company which ceases its existence.

## REFERENCES


1. Bari Ioan, Cataramă Viorel - *Achizițiile si fuziunile internaționale - forme de expansiune a societăților transnaționale*, editura ASE București, 2004
2. Cărpenaru, Stanciu D., - *Drept comercial român*, Editua Allbeck, 2001
3. Cărpenaru - *Drept comercial român,* ediția a II-a revizuită si adăugită, editura All Beck, București,1998
4. Lupulescu Ana Maria - *Reorganizarea societăților comerciale in contextul integrării europene*, editura Wolters Kluwer 2010.
5. Precupeţu, E., *„Despre fuziunea societăţilor comerciale”,* Revista de drept comercial nr. 6/1993
6. Legea 31/1990 – legea societăţilor comerciale, art. 238, actualizat în 2010
7. Regulamentul CE nr.2157/2001 al Consiliului din 8 octombrie 2001 privind statutul societății europene(SE)
8. Norme metodologice privind reflectarea în contabilitate a principalelor operatiuni de fuziune, divizare, dizolvare şi lichidare a societatilor comerciale precum si retragerea sau excluderea unor asociati din cadrul societatilor comerciale si tratamentul fiscal al acestora, Editura CECCAR Bucureşti, 2004