

## TAX TREATMENT OF COMPANY'S DEBT RELIEF UNDER A REORGANIZATION PLAN ACCORDING TO THE LEGAL FRAMEWORK OF NORTH MACEDONIA

Summary.....	1	II. Tax treatment of company's debt relief in comparative law .....	4
I. The reorganization plan and its implementation in bankruptcy and tax law in the Republic of North Macedonia.....	1	III. Conclusion.....	8

(summary)

Company restructuring (reorganization) process during bankruptcy involves wide range of legal issues. The reason for this is the complexity of the process itself. In general, the process is governed by the Law on Bankruptcy. However, some of the challenging legal issues can be related to the tax regulation. In this respect, one of the most important issue is the tax treatment of debt waivers (debt relief) under accepted reorganization plan. The central dilemma here is whether this debt relief is taxable income, or this amount can be qualified for tax exemption? This issue can be examined from two perspectives. First, from the position of the bankruptcy creditor whose claim is canceled under the reorganization plan. Second, from the standpoint of the bankruptcy debtor, whose business undertaking is under reorganization. The authors of this paper are analyzing the *de lege lata* legal framework of North Macedonia regarding this issue and providing for some *de lege ferenda* perspectives by using comparative law methodological approach.

**Key words:** reorganization plan, tax treatment, debt relief

### I. THE REORGANIZATION PLAN AND ITS IMPLEMENTATION IN BANKRUPTCY AND TAX LAW IN THE REPUBLIC OF NORTH MACEDONIA

The purpose of implementing the reorganization plan, pursuant to the Bankruptcy Law<sup>1</sup>, is defined as a "Reorganization procedure" and refers to a procedure that comprises the proposal of the debtor for initiating a reorganization procedure, the discussion and the position stated by the creditors regarding the proposal, the preparation of the reorganization plan, the position stated by the creditors in respect of the reorganization plan and any other activities that, under this Law, are undertaken by the bankruptcy judge, the debtor and the creditors for the purposes of and with reference to the reorganization of the debtor on the basis of the reorganization plan. This undoubtedly means that expectations underpin that the

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<sup>1</sup>See at: Article 2, Paragraph (1), Item 57, of the Bankruptcy Law, "Official Gazette of the Republic of Macedonia" no. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015.

business will outlive the bankruptcy process and that the interests of creditors and other stakeholders (employees, the wider community, etc.) will be realized and secured.

The Bankruptcy Law envisages the implementation of two reorganization models as follows: reorganization in accordance with Article 215 of the Law, when the reorganization plan is submitted after the adoption of a decision to commence a bankruptcy procedure and a reorganization pursuant to Article 215-a, Paragraph (1) of the Bankruptcy Law in which the debtor is allowed to submit a reorganization plan concurrently with the proposal for commencing a bankruptcy procedure.

Pursuant to Article 215, Paragraph (2) of the Bankruptcy Law, if the requirements stipulated in this Law have been met, a reorganization plan can be submitted: 1) concurrently with the submission of a proposal for commencing a bankruptcy procedure by the debtor or by the creditor; 2) upon the proposal of a creditor after the initiation of the bankruptcy procedure until the day of holding the reporting assembly; and 3) upon the proposal of the bankruptcy administrator, in accordance with the decision, that is, the instructions of the creditors' assembly". The methods of implementing the reorganization plan are regulated in Article 215, Paragraph (3) of the Bankruptcy Law.

Reorganization carried out in accordance with Article 215-a, Paragraph (1) of the Bankruptcy Law stipulates that "in accordance with this Law, the reorganization procedure prior to the initiating of the bankruptcy procedure may be conducted solely if the debtor, alongside the proposal for initiating a bankruptcy procedure, also submits a reorganization plan. In this case, the reorganization procedure shall be conducted in accordance with the provisions of this Law that regulates the implementation of such a procedure."

The requirements for commencing a bankruptcy procedure are regulated in Article 5, Paragraphs (1) and (2) of the Bankruptcy Law. Pursuant to Article 5, Paragraph (1) of the Bankruptcy Law, "bankruptcy or reorganization of the bankruptcy debtor shall be conducted when the bankruptcy debtor is incapable of payment, that is, the payment incapability thereof is imminent." Moreover, Paragraph (2) Article 5 of the Bankruptcy Law stipulates that "the debtor shall be deemed incapable of payment if during a period of 45 days, from any account thereof with any entity responsible for payment operations, the amount that was supposed to be paid based on applicable payment grounds has not been paid."

In accordance with the Bankruptcy Law, one of the modalities for conducting the reorganization procedure is a partial reduction, i.e. write-off of the creditors' liabilities in full. Such a measure is a common procedure in both Macedonian bankruptcy law and comparative bankruptcy law. Namely, in accordance with Article 215, Paragraph (3) Item 8 of the Bankruptcy Law "a reorganization plan, within the meaning of the provisions of this part of the Law, can be implemented in the following manner: 8) the payments arising from the debtor's liabilities shall be reduced or deferred".

Experiences in domestic practice have shown a state of disorganization and non-compliance with the Bankruptcy Law regulations with respect to the reorganization plan and related tax law regulations, as well as the tax treatment of written-off liabilities with the reorganization plan. Hence, the intention of the authors of this paper was to present, through this comparative-legal scientific analysis, the legal rules for treating the liability write-off of insolvent companies that along with the proposal for commencing a bankruptcy procedure submit a reorganization plan in the comparative legislation. This paper also analyzes the relevant regulations in the United States, Germany, Italy, Great Britain, Belgium, Serbia, Bulgaria, Romania, Slovenia and Croatia.

In the part of the tax treatment of fully written-off or partially reduced obligations of the bankruptcy debtor, there are two aspects, i.e. two situations that can be taken into consideration. Namely, on the one hand, there are implications for the bankruptcy debtor whose liabilities are reduced or fully written-off, whereas on the other hand, there are

implications for the bankruptcy creditors, whose claims against the bankruptcy debtor are completely canceled or partially reduced. More specifically, these two scenarios described above can occur in two ways as follows:

- a. Writing-off the obligation during the implementation of the reorganization plan would result in income for the Bankruptcy Debtor, which would further become a tax burden and for the same, the Bankruptcy Debtor would appear as a taxpayer, and
- b. Writing-off claims, if those are treated as unrecognized expenses for tax purposes, would have tax implications for the Bankruptcy Creditor as well.

The Law on Income Tax<sup>2</sup> contains provisions that govern the tax treatment of claims that are written off on a regular basis. Specifically, in accordance with Article 9, Paragraph (1), Item 17 of the Law on Income Tax, “unrecognized expenses for tax purposes are considered the following: permanent write-off of outstanding claims, except permanent write-off of outstanding claims on the basis of compulsory social security contributions”.

In addition, the Law on Income Tax contains provisions that in a particular segment regulate the issue from the aspect of the bankruptcy creditor. Namely, in accordance with Article 10, Paragraph (2) of the Law, “Notwithstanding Paragraph (1) of this Article, the costs for value correction of outstanding claims shall be recognized as expenditures for the claims against entities subject to bankruptcy proceedings and liquidation, if the same have been reported and confirmed by the Bankruptcy Administrator”.

However, the previously quoted provisions of the Law on Income Tax shall only apply to outstanding claims from the point of view of creditors, including bankruptcy creditors. In other words, the Law on Income Tax offers no solution regarding tax treatment of written-off liabilities from the aspect of the bankruptcy debtor, i.e. the entity/insolvent debtor over which the reorganization procedure/plan is implemented.

In order to understand the nature of the debt write-off, which may be full or partial as stated above, one must also take into account the specifics of the procedure and the nature of such debt write-off. Namely, the bankruptcy procedure is a court procedure. Pursuant to Article 2, Paragraph (1), Item 66, the Bankruptcy Law envisages that “a bankruptcy procedure” refers to a collective procedure conducted by the competent court for the purposes of reorganization or liquidation of the debtor”. Furthermore, pursuant to Article 6, Paragraph (1) of the Bankruptcy Law, “the court in whose region of jurisdiction the debtor’s registered office is located shall be the locally competent court in the bankruptcy procedure.” The provisions of the Bankruptcy Law that determine the nature of the reorganization plan should also be taken into account. Namely, according to Article 239, (1) “the legally binding court individual decision with which the reorganization plan is approved shall be an enforcement document”. In addition, it should be emphasized that although the Assembly of Creditors decides on the reorganization plan, the Bankruptcy Court also plays a key role, whereby according to Article 237, “after the conclusion of the assembly for discussion and voting upon the proposed reorganization plan, the bankruptcy judge shall adopt an individual decision with which he/she shall approve or reject the proposed plan, at the latest within three days”. Having this in mind, unlike the usual debt write-off in accordance with the creditor's will, as defined in the Law on Obligations<sup>3</sup> (Article 333, Paragraph (2), (“the obligation shall cease when the creditor informs the debtor that he will not demand the fulfillment thereof and when the

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<sup>2</sup>See at: Law on Income Tax “Official Gazette of the Republic of Macedonia” no. 112/14, 129/15, 23/16, 190/16 and 248/18.

<sup>3</sup>See at: “Official Gazette of the Republic of Macedonia” no. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 123/2013

debtor agrees to this”), and which creates a tax liability for the debtor, the full or partial debt write-off in a bankruptcy procedure shall be made first in 1) a special court procedure and 2) it shall be done on the basis of a document (reorganization plan) concluded as an executive document and approved by a decision of the competent bankruptcy judge.

## II. TAX TREATMENT OF COMPANY’S DEBT RELIEF IN COMPARATIVE LAW

In times of economic turmoil, reorganization of trade companies in bankruptcy (including financial debt restructuring) is one of the most successful models of maintaining the debtor's business venture. Restructuring of trade companies that includes debt write-offs (that is, debt restructuring) creates certain tax challenges. In this regard, the question, which is stated above, is raised as to how written-off liabilities (in whole or in part) shall be treated with respect to the bankruptcy debtor company over which the reorganization procedure is being conducted. Under regular circumstances, obligations write-off normally creates a profit for the taxpayer in whose favor the write-off is made. However, on the other hand, obligations write-off is executed for the purpose of implementing a reorganization plan within the rules of bankruptcy laws as a *lex specialis* law and is additionally done through a separate court decision confirming the reorganization plan interpreted as an executive document.

The matter of tax treatment of written-off liabilities when carrying out reorganization in accordance with the rules of bankruptcy laws is of interest to the scientific public as well. In this respect, after a long analysis, the recommendations of the European Law Institute in this regard have been derived. Namely, in its recommendation, the Institute states the following: 8.13 “Member States should ensure that any debt relief under the restructuring plan shall not be considered taxable income”<sup>4</sup>.

According to this document, it is considered that restarting a troubled company through a reorganization plan should not be burdened with tax rules that would consider written-off liabilities through a reorganization plan as taxable income and would create a tax liability. In this sense, the legal framework for reorganization is required to provide for appropriate tax reliefs or exemptions.<sup>5</sup>

In order to specify the legislation concerning the matter with tax treatment of written-off claims, the document of the World Bank entitled Out-of-Court Debt Restructuring<sup>6</sup> in its recommendation B3.4 underpins the need to provide a favorable or tax-neutral treatment for losses or obligations write-offs necessary to achieve the debtor's reorganization based on the fair market value of the property subject to the transaction. The document itself, in Paragraphs 32 and 33, highlights the difficulties in practice in the area of financial and operational restructuring caused by tax regulations. Such a situation makes reorganization procedures unpredictable, but at the same time creates additional costs for the entity being reorganized. Additionally, any unforeseen and unexpected tax event can complicate the entire procedure. The same applies specifically to debt write-offs, which as such can become a major expense for participants in the reorganization procedure.

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<sup>4</sup>See at: “Rescue of Business in Insolvency Law”, Instrument of the European Law Institute, 2017, p. 33, Available at: [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/Instrument\\_INSOLVENCY.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf), accessed on: 15.8.2029.

<sup>5</sup>See at 8.7.11 Tax exemption, “Rescue of Business in Insolvency Law”, Instrument of the European Law Institute, 2017, p. 339.

<sup>6</sup> José M. Garrido, “Out-of-Court Debt Restructuring”, p. 21 and 29, Available at: <https://siteresources.worldbank.org/INTLAWJUSTICE/Resources/OutOfCourtDebtRestructuringBeforeTypesetting.pdf>, accessed on 20.8.2019.

On June 20, 2019, Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)<sup>7</sup> was adopted. Under the Directive, one of the modalities of company restructuring is debt write-off, which in Article 2 (1) 11 of the Directive is defined as “‘full discharge of debt’ meaning that enforcement against entrepreneurs of their outstanding dischargeable debts is precluded or that outstanding dischargeable debts as such are cancelled, as part of a procedure which could include a realisation of assets or a repayment plan or both”.

Recommendations from relevant international organizations are also followed by national laws of many countries in the world.

In the *Republic of Serbia*, the matter of tax treatment of claims that are written off in a reorganization procedure is regulated by the Law on Corporate Income Tax (*Zakon o porezunadobitpravnihlica*)<sup>8</sup>. Pursuant to the provisions of this Law, claims written off in the procedure for implementing a reorganization plan are recognized as expenditures. This means that there will be no tax liability for the entity over which the reorganization procedure is carried out. Such a conclusion stems from Article 16, Paragraph 4 of this Law according to which “Notwithstanding Paragraphs 1 and 2 of this Article, the write-off of individual claims value covered by a previously adopted reorganization plan confirmed with a final decision adopted in accordance with the law regulating bankruptcy shall be recognized as expenditure”. In addition, this law in Serbia recognizes written-off obligations incurred in the process of financial restructuring as expenditures. This issue is regulated in accordance with Article 16, Paragraph (3) of the Law. Pursuant to Article 25a, Paragraph 4, of the Serbian law, “the taxation period in which those are declared shall not include income of the taxpayer in the taxation basis arising on the grounds of executed debt write-off that the taxpayer has towards users of public funds defined in accordance with the law regulating budget systems, bankrupt banks and chambers of commerce, when such debts are covered by a pre-prepared reorganization plan confirmed by a final decision in accordance with the law governing bankruptcy proceedings”.

The German example is particularly interesting<sup>9</sup>. Until November 2016, the procedure in *Germany* was regulated by special mandatory guidelines issued by the German Ministry of Finance of 27 March 2003. In line with these Guidelines (Restructuring Decree, *Sanierungserlass*), tax authorities were able to decide not to tax or partially tax written-off obligations during the bankruptcy procedure. On November 28, 2016, the Supreme Financial Court (*Bundesfinanzhof*) decided to abolish these Guidelines because it considered that the same gave discretionary powers to German tax authorities. In order to address this issue, and in order to continue these tax reliefs, a separate law was adopted incorporating and modifying the content of the repealed guidelines. This Act was enacted on November 23, 2018, and it is

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<sup>7</sup>Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023&from=EN>, accessed on: 22.10.2019

<sup>8</sup>See at: (“Sl. Glasnik RS”. Br. 25/2001, 80/2002, 80/2002 –dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 68/2014 – dr. zakon, 142/2014, 91/2018 – autentično tumačenje, 112/2015, 113/2017 i 95/2018), Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_porezu\\_na\\_dobit\\_pravnih\\_lica.html](https://www.paragraf.rs/propisi/zakon_o_porezu_na_dobit_pravnih_lica.html), accessed on: 11.8.2019.

<sup>9</sup>See at: Tax Exemption Offers Relief in the German Restructuring Market, Available at: <https://www.lw.com/thoughtLeadership/lw-tax-exemption-relief-german-restructuring-market>, accessed on 17.8.2019 and the German Parliament adopts legislation on limitation of tax deduction of royalties and tax exemption of restructuring gains, available at: <https://www.ey.com/gl/en/services/tax/international-tax/alert--german-parliament-adopts-legislation-on-limitation-of-tax-deduction-of-royalties-and-tax-exemption-of-restructuring-gains>, accessed on 22.8.2019.

particularly interesting that it had retroactive effect in order to cover the period from when the Guidelines were repealed. Under special conditions contained in section 3a of the Income Tax Act and section 7b of the Trade Tax Act, the so-called tax exemption is granted i.e. restructuring profits, or profits realized by the Bankruptcy Debtor as a result of full or partial write-off of the liabilities the debtor has towards the creditors. In this sense, the debtor must prove: that restructuring (reorganization) is necessary (*Sanierungsbeduerftig*); that it has the capacity to implement it (*Sanierungsfahig*) and that writing-off obligation is an appropriate means so as to maintain the debtor's business venture (*Sanierungseignung*).

The *United States of America* acknowledge as expenditure written-off obligations when carrying out reorganization in accordance with Chapter 11 of the US Bankruptcy Code<sup>10</sup>. Tax treatment of written-off liabilities is regulated by the Internal Revenue Code Section III entitled “Items specifically excluded from gross income”, and Article 108 entitled “Income from discharge of indebtedness”.<sup>11</sup> As outlined in Article 108(a)(1)(A), “General gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if the discharge occurs in a title 11 case<sup>12</sup>”.

In accordance with the Income Tax (Trading and Other Income) Act 2005 of *Great Britain*, the possibility of tax exemption is provided in case of writing-off liabilities in a bankruptcy procedure. Namely, the same is envisaged in Article 35(1) (c) of this Act.<sup>13</sup> Article 259 of this Act includes the definition of the term bankruptcy proceedings in the context of the provisions of Article 35(1)(c) of the same Act. Therefore, the phrase “statutory insolvency arrangement” refers to an agreement (for restructuring) in accordance with the Bankruptcy Act of 1986, the Scottish Bankruptcy Act of 1985 or the Bankruptcy Decree of Northern Ireland of 1989, as well as restructuring in line with Section 26 of the Trade Companies Act of 2006.<sup>14</sup> Special provisions for the exemption of these tax liabilities are also contained in the Corporation Tax Act 2009 in Articles 55<sup>15</sup>, 303<sup>16</sup> and 479<sup>17</sup>. The procedure is explained in more detail in the guidelines published for that purpose by Her Majesty Revenue and Customs<sup>18</sup>.

In *Croatia*, this matter is regulated with the Law on Profit Tax (*Zakon o porez nadobi*)<sup>19</sup> Article 9 under the headline “Value adjustment and write-off of claims” (*vrednosno usklađenje i otpis potraživanja*). In Article 9, Paragraph (3), this Croatian law provides that for written-off claims in bankruptcy proceedings, there shall be no tax liability. In order to be

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<sup>10</sup>From theoretical aspect see more at: Douglas A. Kahn and Jeffrey H. Kahn, “Cancellation of Debt and Related Transactions”, available at: <https://repository.law.umich.edu/articles/1825>, accessed on 9.8.2019, University of Michigan Law School, pp. 168-172; and Jason Muraco and Michelle Brower, “Debt Restructuring Poses Various Income Tax Challenges and Valuation Considerations”, Available at: <https://www.stout.com/es-es/insights/article/debt-restructuring-poses-various-income-tax-challenges-and-valuation-considerations>, accessed on 9.8.2019.

<sup>11</sup>Available at: <https://www.law.cornell.edu/uscode/text/26/108>, accessed on 9.8.2019.

<sup>12</sup>Available at: <https://www.law.cornell.edu/uscode/text/26/108>, accessed on 9.8.2019.

<sup>13</sup>In calculating the profits of a trade, no deduction is allowed for a debt owed to the person carrying on the trade, except so far as (c) the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement. Available at: <https://www.legislation.gov.uk/ukpga/2005/5/section/35>, accessed on 9.8.2019.

<sup>14</sup>Available at: <https://www.legislation.gov.uk/ukpga/2005/5/section/259>, accessed on 9.8.2019.

<sup>15</sup>Available at: <https://www.legislation.gov.uk/ukpga/2009/4/section/55>, accessed on 9.8.2019.

<sup>16</sup>Available at: <https://www.legislation.gov.uk/ukpga/2009/4/section/303>, accessed on 9.8.2019.

<sup>17</sup>Available at: <https://www.legislation.gov.uk/ukpga/2009/4/section/479>, accessed on 9.8.2019.

<sup>18</sup>Available at: <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim42701>, accessed on 9.8.2019.

<sup>19</sup>Narodne Novine 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 106/18, available at: <https://www.zakon.hr/z/99/Zakon-o-porezu-na-dobit>, accessed on 9.8.2019.

able to do so, the requirement of Article 9, Paragraph (2), which calls for the claim to be recorded as income, and all necessary payments for the settlement of the claim to be taken, with the attention of a good businessman, must be met.

The legislation of the *Republic of Bulgaria* also provides for special privileges regarding tax treatment on the part of written-off liabilities during the reorganization procedure. This provision can be found in Article 37, Paragraph 1, point 3 of the Law on Corporate Profit<sup>20</sup>.

In the *Republic of Slovenia*, the issue of writing-off claims during bankruptcy proceedings is regulated by Article 21 (6) of the Law on Corporate Income Tax (Zakon o davku oddohodkov pravnih oseb)<sup>21</sup>. According to this provision “writing-off claims shall be recognized as an expense on the basis of a final court decision to conclude a bankruptcy procedure or on the basis of a final court decision to conclude a settlement on the part of claims that are not paid or not paid in full”.

Similarly, *Romania* also provides for special tax exemptions in respect of obligations write-off as a result of a court ruling that adopts the reorganization plan.<sup>22</sup>

A solution with almost identical content is also envisaged in Italian law. Namely, in *Italy*, in the event of a debt restructuring agreement, which is formally confirmed in a bankruptcy procedure, any contractual amount of the company's written-off obligations shall not be considered as profit for tax purposes.<sup>23</sup>

In *Belgium* under the rules adopted on January 31, 2009, in cases of debt write-off with the creditors' consent, when this is confirmed by a court decision, the profit resulting from such a situation shall be exempted from taxation.<sup>24</sup>

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<sup>20</sup>Article 37(1) (supplemented – SG 106/08, in force from 01.01.2009; previous text of Art. 37, amended – SG 100/13, in force from 01.01.2014), those receipts and expenses of subsequent appraisals and deletion of receivables under Art. 34 shall be recognized for tax purposes not earlier than in the year in which any of the following circumstances is present: 3. the debtor's bankruptcy proceedings have been suspended with an approved rehabilitation plan, which provides for incomplete satisfaction of the taxable person; the unrecognized receipts and expenses shall be recognized for tax purposes only with regard to the decrease of the receivable Corporate income taxation act (Prom. SG. 105/22 Dec 2006, amended SG. 52/29 Jun 2007, amended SG. 108/19 Dec 2007, amended SG. 110/21 Dec 2007, amended SG. 32/25 Mar 2008, amended SG. 69/5 Aug 2008, amended SG. 106/12 Dec 2008, amended SG. 32/28 Apr 2009, amended SG. 35/12 May 2009, amended SG. 95/1 Dec 2009, amended SG. 94/30 Nov 2010, amended SG. 19/8 Mar 2011, amended SG. 31/15 Apr 2011, amended SG. 35/3 May 2011, amended SG. 51/5 Jul 2011, amended SG. 77/4 Oct 2011, amended SG. 99/16 Dec 2011, amended SG. 40/29 May 2012, amended SG. 94/30 Nov 2012, amended SG. 15/15 Feb 2013, supplemented SG. 16/19 Feb 2013, amended SG. 23/8 Mar 2013, amended SG. 68/2 Aug 2013, supplemented SG. 91/18 Oct 2013, amended SG. 100/19 Nov 2013, amended SG. 109/20 Dec 2013, amended SG. 1/3 Jan 2014, amended and suppl. SG. 105/19 Dec 2014, supplemented SG. 107/24 Dec 2014, amended SG. 12/13 Feb 2015, amended and suppl. SG. 22/24 Mar 2015, amended SG. 35/15 May 2015, amended SG. 79/13 Oct 2015, amended and suppl. SG. 95/8 Dec 2015, suppl. SG. 32/22 Apr 2016, amended SG. 74/20 Sep 2016, amended and supplemented SG. 75/27 Sep 2016, amended and supplemented SG. 97/6 Dec 2016, amended SG. 58/18 Jul 2017, amended SG. 85/24 Oct 2017, amended SG. 92/17 Nov 2017, amended SG. 97/5 Dec 2017, supplemented SG. 103/28 Dec 2017, amended SG. 15/16 Feb 2018, supplemented SG. 91/2 Nov 2018, amended and supplemented SG. 98/27 Nov 2018, amended SG. 102/11 Dec 2018, amended SG. 103/13 Dec 2018), available at: <http://www.nap.bg/en/document?id=108&athttps://www.lex.bg/laws/ldoc/2135540562>, accessed on 9.8.2019.

<sup>21</sup>This Law is available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687>, accessed on 9.8.2019,

The English version of the Law is available at: [http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki\\_in\\_carine/Sprejeti\\_predpisi/Zakon\\_o\\_davku\\_od\\_dohodkov\\_pravnih\\_oseb/ZDDPO-2ABCDEangNPB6.pdf](http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Sprejeti_predpisi/Zakon_o_davku_od_dohodkov_pravnih_oseb/ZDDPO-2ABCDEangNPB6.pdf), accessed on 9.8.2019.

<sup>22</sup>See at: Article 287, Itemd) of the Romanian Tax Code, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/moss\\_2018\\_ro\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/moss_2018_ro_en.pdf), accessed on 9.8.2019.

<sup>23</sup>“Italy”, Global Restructuring and Insolvency, Baker McKenzie, Available at: <http://restructuring.bakermckenzie.com/wp-content/uploads/sites/23/2017/01/Global-Restructuring-Insolvency-Guide-12-2016New-Logo-Italy.pdf>, accessed on 14.8.2019, p. 21

<sup>24</sup>Available at: <https://www.twobirds.com/en/news/articles/2012/forgiveness-distressed-debt-europe>, accessed on 14.8.2019.

As a rule, in *Poland*, in the case of write-offs, it is considered that they should be taxable with the debtor because they represent a profit for him. However, when it comes to debt write-off in bankruptcy proceedings, which provides for the possibility of reorganization, written-off liabilities do not qualify as profit on the debtor's side.<sup>25</sup>

### III. CONCLUSION

From the analysis carried out within the scope of this paper, addressing tax treatment of written-off liabilities through a reorganization plan, and from the aspect of the bankruptcy debtor, i.e. the entity subject to the reorganization procedure, regarding its possible tax liability on the basis of the profits gained by writing-off liabilities, several conclusions of a general and specific nature can be drawn as follows:

- We shall underline that the global trend in bankruptcy law and bankruptcy legislation is to give the insolvent debtor another chance. Rather than cashing in the debtor's property piece by piece as “scrap metal”, it is better to recognize the value of the business venture and continue working. This, of course, shall occur when there are conditions to continue working, not at all costs;
- The primary ways for the insolvent debtor to continue working is to carry out either preventive (financial) restructuring or a pre-bankruptcy reorganization procedure based on a proposed reorganization plan or to conduct a procedure following a submitted reorganization plan in the bankruptcy procedure. The decision rests with the debtor and his creditors and must be approved by the court.
- Reorganization implementation models that are commonplace in the world are incorporated into the Bankruptcy Law;
- A large number of international organizations call for harmonization of tax regulations worldwide, with the aim of exempting the tax liability on the basis of profits from written-off obligations. Such are the references from the European Law Institute, the World Bank and others, for example. Guidelines in this regard are given by the European Union in the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132;
- In a number of countries including the United States, Germany, Italy, the United Kingdom, Belgium, Poland, Bulgaria, Romania, Serbia, Croatia and Slovenia, tax regulations most commonly contain special provisions that envisage tax exemption rules for written-off obligations of the entity subject to the reorganization or restructuring procedure;
- While considering this ground for exemption from income tax liabilities, the legislators of individual countries have been guided by the fact that it is a matter of writing-off obligations that arose in a separate court procedure and are determined in a reorganization plan. Hence, the reorganization plan is presented by a court decision or an enforcement document. Writing-off obligations is done by a material regulation (law) that regulates the bankruptcy or tax procedure;
- All relevant studies show that such contingency expenditures are a risk that can endanger the restructuring process, as they represent a high cost for the reorganization process itself.

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<sup>25</sup> *Op.cit.*



On the basis of the above stated, it is obvious that there is a discrepancy between bankruptcy and tax law. It seems that the way the tax law, or the Law on Income Tax, has been set up has a limiting effect on the procedures for implementing reorganization plans and thus discourages the participants in the bankruptcy procedure from deciding to implement a reorganization plan. The fact is that a successful reorganization procedure, which enables the debtor's business to continue, protects the interests of a wide range of stakeholders, including creditors, employees, the state, etc. Hence, it can be concluded that, given the approach of the tax law in North Macedonia, the means of reviving the bankruptcy debtor through reorganization, cannot be successfully implemented without adequate state support. One of the possible support patterns is the introduction of tax reliefs or exemption of written-off liabilities through a reorganization plan. As outlined above, many national economies worldwide have already implemented tax reforms related to the treatment of liability writing-off in a reorganization procedure.

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