

NNDKP secures a significant decision for transfer pricing litigation in Western Romania



The High Court of Cassation and Justice has recently upheld a decision of the Timisoara Court of Appeal, with significant relevance for transfer pricing disputes based on the re-qualification of the functional profile of a company within a multinational group from independent producer to producer under the full control of the group. It has been confirmed that elements specific to the operation of a multinational group, such as providing support services by global cooperation structures or the existence of common directors, do not prove the existence of a transaction between the parent company and the controlled entity that would justify reconsidering the functional profile of the company, even in cases where the controlled entity experienced periods of losses.

Specifically, although the tax authorities invoked the existence of an unwritten understanding – not reflected in invoices or contracts - based on which the audited company was allegedly controlled by the group, acting in concert, with the aim of making sure the company continued to operate at a loss, which would result in the entire activity of the entity concerned (including that carried out with independent third parties) being regarded as that of a contract manufacturer, the evidence produced, including a complex tax expert report, did not reveal the existence of such an understanding.

The court confirmed that an adjustment cannot be based on a presumed understanding. On the contrary, to make an adjustment, it is first necessary to identify and delineate the transaction to be adjusted. In the absence of an identified and delineated transaction that would justify the adjustment, the court established that the challenged acts were issued through the incorrect application of the provisions of Article 11 of the Fiscal Code, in the sense that an additional tax base was established by considering the transactions carried out with independent parties.

Since similar situations have been frequent in the recent years in Western Romania, the case is highly important.

NNDKP, through its Timisoara Office, has been involved in all phases of the litigation, providing integrated legal and tax services in a mixed team that included *Partner* **Eva Forika**, *Head of NNDKP Timișoara Office*, *Senior Associate* **Ion Loga**, *Tax Director* **Sorin Mociofan**, from NNDKP Timișoara Office, as well as *Tax Partner* **Marius Ionescu**, Co-Head of NNDKP Tax Advisory Services.