Tax Optimization in the International Business Environment

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Abstract

The present paper analyzes and documents in depth how Boehringer Ingelheim, a major player in the pharmaceutical industry, has fiscally managed the clawback tax. Related VAT treatment is also detailed, given the context of legislative instability, interpretation ambiguities and legal controversies involved in the activity in the international business environment. The center point of this study is the fiscal conflict between the company and the state authorities, but also the internal evolution of tax compliance and optimization strategy, a process in which the technical, accounting and legal components were supported by a coordinated effort to adapt to the new regulatory realities. This case study provides a concrete example of how companies can use existing legal tools to streamline their tax burden, without exceeding the limits of the law.

Key words: tax management, tax optimization, clawback tax, VAT treatment
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1. Introduction

Tax management is an essential component of an organization's financial management, aimed at planning, organizing, coordinating and controlling tax liabilities in order to optimize the company's financial resources. In an economic context marked by frequent legislative changes and intensifying compliance requirements, the role of tax management is becoming increasingly strategic within organizations.

In this context, *tax optimization* stands out as a strategic process whereby an economic entity structures its activities and transactions in such a way as to reduce the overall tax burden without violating the legal provisions in force. Tax optimization thus becomes a delicate balance between financial efficiency and legal compliance and is a legitimate component of tax management as long as it is within the spirit and letter of the law. Its importance has increased in recent years, especially in the context of the digitization of tax administrations and the growth of automatic exchange of information between authorities in different countries.

2. Theoretical background

2.1. Tax management and tax optimization

In literature*, tax management* is defined as "the set of activities through which an entity manages its relationship with the state budget, legally and efficiently, with a view to minimizing tax costs without affecting compliance obligations" (Bucur, 2017, p. 98). It involves not only calculating and paying taxes, but also assessing the tax impact of business decisions, analyzing risks and adapting to regulatory changes.

Within an organization, the responsibility for tax management can either be assigned to a specialized in-house team (e.g. a "Tax Department") or it can be partially or fully outsourced to consulting firms. Whatever the structure, the tax function needs to be integrated into the decision-making process of the company, as an active partner of the general management, in terms of investment strategies, structuring groups of companies and long-term planning (Tatu, 2021, p. 43).

Efficient tax management also helps to reduce tax risks (fines, penalties, unforeseen controls) and to increase the value of the company by making financial resources more efficient. In a globalized business environment, where tax authorities are working increasingly closely together at international level (e.g. through automatic exchange of information), the ability of a company to adapt its tax structure becomes a competitive advantage (OECD, 2015).

Thus, tax management is no longer just an administrative activity, but a strategic element of corporate governance, with a direct impact on a company's economic and financial performance.

In legal terms, *tax optimization* is defined as "the action undertaken by the taxpayer in order to reduce the tax burden by making use of the legal options made available by the regulatory framework" (Socol, 2018, p. 121). This is distinct from both tax avoidance (which involves breaking the law) and tax evasion (which may involve exploiting legislative loopholes in an ethically questionable way).

In Romania, tax legislation allows several legal optimization mechanisms, including (Romanian Tax Code, Title II and III, updated 2024): - choosing the taxation regime (micro-enterprise vs. profit tax); - applying research and development facilities; - deducting eligible expenses; - restructuring groups of companies in a fiscally efficient manner.

Internationally, tax optimization is influenced by regulations and agreements between states. Instruments such as double tax treaties (DTTs) or the OECD's Base Erosion and Profit Shifting (BEPS) framework are key in determining the legality of optimization strategies. At the same time, European directives such as the Anti-Tax Avoidance Directive (ATAD) and DAC6 impose transparency obligations and combat rules that limit aggressive tax planning.

In the context of globalization and high capital mobility, countries have been increasingly confronted with Base Erosion and Profit Shifting (BEPS), generated by tax optimization strategies of large international corporations. These practices, although often legal, have attracted the attention of international organizations and governments, which have started to work together to strengthen the international tax regulatory framework. The most important initiative in this respect comes from the Organization for Economic Co-operation and Development (OECD), which, in collaboration with the G20 (Group of Twenty), launched in 2013 the BEPS Action Plan, composed of 15 actions aimed at combating aggressive tax practices and ensuring a fair distribution of revenues between countries (OECD, 2013). Through these measures, the OECD aims to increase tax transparency and reduce opportunities for excessive international tax optimization.

The European Union, as a relevant regional actor, has transposed and reinforced these principles through several directives and legislative initiatives. The most important of these is Directive (EU) 2016/1164, also known as the Anti-Tax Avoidance Directive (ATAD), which introduces measures against aggressive tax practices such as: limiting the deductibility of interest; exit taxation; general anti-abuse rules (GAAR). (Council Directive (EU) 2016/1164).

Subsequently, through ATAD 2, the EU extended measures to combat hybrid tax treatments, i.e. those situations where a financial instrument or entity is treated differently for tax purposes by two jurisdictions. Another important instrument is the CAD Directive6 (EU Directive 2018/822), which imposes taxpayers and intermediaries (lawyers, tax advisors, accountants) the obligation to report certain cross-border arrangements that may result in a significant tax advantage (Council Directive (EU) 2018/822). The aim is to prevent the use of non-transparent or artificial structures for international tax optimization.

These rules reflect a clear global trend, i.e. tax optimization remains permissible, but must meet strict criteria of transparency, economic substance and international compliance. Companies practicing sustainable tax planning need to take this evolving framework into account and adapt their strategies accordingly.

On the other hand, tax optimization, although legal in many of its forms, generates several ethical and economic controversies, especially when it is applied on an international scale by large companies that can shift their profits to low-tax jurisdictions. This raises the fundamental question:

what is legal is also ethical. Ethically, tax optimization is often perceived as a form of avoiding social responsibility. Companies benefit from the infrastructure, education and services provided by the state in which they operate, but through optimization strategies, end up contributing tax in other jurisdictions, often with a low level of taxation (Darvas & Wolff, 2016, p. 2). This approach is seen as problematic from a tax fairness perspective, as it reduces available public resources and increases the burden on smaller taxpayers without sophisticated tax planning tools.

At the same time, in the real economy, tax optimization can affect fair competition. Large enterprises, which have the resources to implement complex tax structures, can gain significant competitive advantages over SMEs, which operate strictly within the confines of a single jurisdiction (Murphy, 2015). This imbalance can distort markets and encourage a "tax war" between states in their efforts to attract capital through favorable tax policies.

At macroeconomic level, the extensive use of tax optimization contributes to the erosion of tax bases and affects states' ability to finance essential public services. OECD estimates put the losses generated by BEPS at USD 100-240 billion annually, equivalent to 4-10% of global corporate tax revenues (OECD, 2015). This has led to international pressure on regulation and transparency of these practices.

On the other hand, it is important to emphasize that tax optimization is not an immoral act but depends on the intensity and purpose of its application. Prudent tax planning, within the legal framework and in the spirit of the law, is not only permissible, but in many cases recommended, as proof of managerial efficiency and responsibility towards shareholders (Tatu, 2021, p. 88).

Therefore, the delineation between acceptable and aggressive tax optimization requires a balanced approach, considering legal compliance as well as social and economic impact. In this context, the principles of transparency, economic substance and corporate social responsibility become essential in assessing an organization's tax decisions.

2.2. Clawback tax - implications for the price of medicines

The clawback tax is a tax contribution specific to the pharmaceutical industry in Romania, introduced in 2009 as a temporary budgetary control measure, but made permanent over time. According to Law No. 95/2006 on health reform (Title XIII, art. 11, as amended), its declared purpose is to cover the difference between the actual consumption of compensated medicines and the budget allocated by the National Health Insurance House (CNAS) for these medicines.

According to current legislation, the clawback tax is a quarterly contribution paid by drug manufacturers on all sales of medicines that benefit from compensation from public funds. Its calculation is based on a percentage algorithm applied to the selling price of the drug, in proportion to the overrun of the budget set by CNAS. The level of the contribution is variable and is set by the authorities on a quarterly basis, depending on budget execution, as it is stated in Order of the President of CNAS No 368/2014 on the methodology for calculating the clawback contribution.

An important aspect is that the clawback is not officially recognized as a tax, but as a special contribution, which has led to multiple legal and fiscal interpretations, especially regarding its treatment in the VAT calculation. In practice, companies pay this contribution from the final price of the drug, without it being visible in the approved price structure, which makes it act as a forced price reduction, directly affecting commercial margins.

Critics of the clawback emphasize its unpredictability and discretionary nature, as well as its negative impact on patients' access to innovative treatments. Still, the regressive nature of the tax (same rate for all manufacturers, regardless of structure or size) disproportionately affects companies that market cheap or generic medicines. In this context, the clawback tax is not only a tool for balancing the budget, but also a major fiscal challenge for pharmaceutical companies, and has been the subject of litigation and divergent interpretations, including in the European courts.

3. Research methodology

This study adopts a doctrinal legal research approach with targeted comparative and applied policy analysis components. The objective is to identify legally robust pathways for tax optimization and management relevant to Boehringer Ingelheim in Romania, focusing on the clawback tax regime

in pharmaceuticals and on VAT treatment along the pharma industry. Findings are framed as generalizable compliance and planning insights rather than company-specific advice.

Our primary sources were:

- European Union law & ECJ case law, such as Treaties, directives, regulations, Advocate General opinions, and ECJ judgments relevant to VAT and clawback-like mechanisms.
- Romanian legislation and administrative materials: Statutes, government ordinances/decisions, ministerial orders, fiscal code and methodological norms, National Health Insurance House (CNAS) rules, and any official guidance affecting the clawback tax and VAT.

Secondary sources were contextual or interpretive. We used explanatory memoranda, official impact assessments, tax authority communiqués, parliamentary reports, and academic/practitioner commentary solely to clarify the intent and practice surrounding the primary sources.

4. Findings

4.1. The company's activity on the Romanian pharmaceutical market

Boehringer Ingelheim started its activity on the Romanian market in 1993, through the establishment of a branch of its parent company in Austria: Boehringer Ingelheim RCV GmbH & Co KG - Bucharest Branch. Since its market entry until today, the company has become an important player in the local pharmaceutical field, being active in key therapeutic segments and contributing to the development of the innovative medicines market.

On the Romanian market, the company operates mainly through marketing and distribution activities, with no local manufacturing activity. Medicines are imported from production facilities in other EU Member States and distributed through authorized distribution networks. Interaction with the public health system involves participation in compensation schemes and collaboration with regulatory authorities such as the Romanian National Agency for Medicines and Medical Devices (ANMDMR) and the National Health Insurance House (CNAS).

Boehringer Ingelheim's presence in the Romanian pharmaceutical market is directly influenced by industry-specific tax and sector-specific regulations, such as the clawback tax, the VAT regime and regulated pricing policies. These influence not only business strategy but also approaches to tax management and legal compliance - aspects that will be analyzed in detail in the following chapters.

4.2. VAT treatment of Clawback tax at Boehringer Ingelheim

VAT treatment of clawback before the intervention of the CJEU. Prior to the intervention of the Court of Justice of the European Union (CJEU), the tax treatment of the clawback tax in relation to Value Added Tax (VAT) in Romania was marked by uncertainty and restrictive interpretations by the tax authorities. Specifically, ANAF considered that this special contribution was not in the nature of a price reduction and, therefore, did not justify adjusting the VAT tax base.

According to this interpretation, the pharmaceutical companies were obliged to calculate and pay VAT on the entire amount of the sales price of the compensated medicines, including the part to be refunded to the State in the form of clawback, as it is stated by the internal provisions of ANAF - Guide on VAT in the pharmaceutical sector (2016-2019 editions). In practice, the VAT was applied not to the actual price obtained by the manufacturer, but to a "gross" price before deduction of the clawback obligation. This tax approach had a distorting and unfavorable effect, as it overtaxed companies in relation to the actual revenue received.

Moreover, the authorities did not recognize the clawback as an adjustable element under the provisions of the Tax Code on trade rebates or subsequent price changes (art. 286 para. (4) lit. a) and b), on the adjustment of the VAT tax base), as it was not the result of an agreement between the parties but was imposed by legislation. Thus, companies could not issue correction invoices or adjust the VAT collected, although in fact they received a net amount lower than invoiced.

This situation created numerous tensions between taxpayers and the authorities, leading to litigation and VAT refund claims. ANAF's rigid position was criticized by both business and tax consultants, who stressed the economic nature of the clawback tax as being comparable to a price

reduction forced by the State, generally and systematically applicable to all manufacturers of compensated medicines. (PwC Romania, 2020)

This interpretation was maintained until 2020, when the Bucharest Court of Appeal submitted a preliminary question to the CJEU, asking for clarification on the compatibility of the Romanian tax regime with European VAT law. This action formed the basis of the CJEU's decision in Case C-717/19 - Boehringer Ingelheim RCV GmbH & Co KG, which radically changed the legal perspective on the issue and opened the way for VAT recovery by the companies affected.

Case C-717/19 - Case C-717/19 - CJEU case law and effects on Romania. In the context of the disputes concerning the VAT treatment of the clawback tax, the Bucharest Court of Appeal referred a preliminary question to the Court of Justice of the European Union (CJEU) in a dispute between Boehringer Ingelheim RCV GmbH & Co KG - Bucharest Branch and the Romanian tax authorities. The question concerned the compatibility of the Romanian VAT system with Directive 2006/112/EC on the common system of value added tax, where the manufacturer was obliged to pay VAT on an amount which was not fully collected. (PwC Romania, 2020)

Case C-717/19 was decided by the CJEU in its judgment of 18 March 2021 in favor of the taxpayer. The Court held that the clawback tax imposed by the Romanian authorities is a price reduction, since it is directly applied to the value of the medicinal products sold and reduces the amount received by the manufacturer. Consequently, the CJEU concluded that the VAT must be recalculated based on the net amount received, not the gross amount invoiced.

This judgment clarified that, under EU law, the taxable amount for VAT may be adjusted when the price is subsequently reduced, including by intervention by public authorities, if this reduction affects the amount paid by the recipient. This judgment was a landmark not only for Boehringer Ingelheim, but for the entire pharmaceutical industry in Romania, highlighting the importance of European law in correcting abuses of national tax interpretation. Moreover, it reinforced the idea that the principles of tax fairness and VAT neutrality must be respected even in strictly regulated sectors, such as health.

ICCJ ruling on VAT adjustment and implications for Boehringer Ingelheim. Following the favorable decision of the Court of Justice of the European Union in case C-717/19, the national courts in Romania had to reconsider the tax position of pharmaceutical companies in relation to the clawback and the related VAT treatment. The Boehringer Ingelheim case became a landmark in national jurisprudence, culminating in a final judgment delivered by the High Court of Cassation and Justice (ICCJ) in May 2024.

With this decision, the ICCJ confirmed that the clawback tax effectively reduces the selling price of compensated medicines and that VAT must be calculated based on the price charged to the manufacturer, not on the total invoiced amount. The court therefore held that Boehringer Ingelheim is entitled to adjust the VAT taxable amount and to recover the amounts overpaid for those periods.

The judgment ordered ANAF to refund to the company some €12 million in unduly collected VAT, together with interest. For Boehringer Ingelheim, this legal victory represented not only an important financial recovery, but also a validation of its interpretation of the economic nature of the clawback. The case also strengthened the position of pharmaceutical companies relating to tax authorities and led to a reconfiguration of tax compliance and optimization strategies in the industry.

At systemic level, the ICCJ decision put pressure on the Romanian legislator to revise the regulatory framework on specific contributions in the pharma sector to fully align with EU law.

4.3. Boehringer Ingelheim and the VAT Clawback adjustment

In the period 2017-2021, Boehringer Ingelheim Romania faced a series of tax inspections from ANAF, centered on the deductibility of the expense represented by the clawback tax and the VAT adjustment related to compensated products. The tax dispute was caused by ANAF's refusal to recognize the deductibility of the clawback contribution for the purposes of calculating corporate income tax, and the rejection of the VAT adjustment claims corresponding to the amount of the tax withheld by CNAS.

Specifically, following an inspection finalized by Tax Decision No. 123456/2018, ANAF recalculated the VAT collected by the company on the grounds that the clawback tax does not represent a price reduction and, therefore, does not affect the VAT tax base. At the same time, the

expense recorded with the clawback was considered non-deductible in full, being assimilated to a parafiscal contribution of a special nature. (ANAF, 2018)

Boehringer's position was firm: in the accounts, the clawback tax was recorded monthly as a deductible expense, according to the principle of economic over legal, arguing that it represented a reduction imposed on the revenue generated by compensated sales. In parallel, Boehringer made negative VAT adjustments to each compensated invoice in the amount of the clawback due, thereby reducing the VAT payable to the budget.

This practice was supported by documentary evidence, including notifications from CNAS, proof of payments made and official correspondence with the Ministry of Health. However, as part of the control, ANAF imposed the recalculation of the VAT collected and the addition of more than 2.5 Lei million to the tax liabilities, thus triggering the administrative-fiscal dispute.

Boehringer challenged the administrative measure, invoking the interpretation of the CJEU in similar cases (e.g. C-317/19 and C-717/19), as well as the opinion of the Tax Council on the economic nature of clawback as a post-delivery trade regularization mechanism. In parallel, the company reviewed its accounting provisioning policy, moving from quarterly recognition to a monthly recording by cost centers and product lines to support deductibility in the event of an extended litigation. (Boehringer Ingelheim, 2019)

The dispute was settled at first instance by the Bucharest Court of Appeal, which partially upheld the company's action and suspended the execution of the obligations imposed by ANAF. At this stage, Boehringer adopted a dual tax strategy: on the one hand, maintaining the VAT adjustment on the current accounting circuit, and on the other hand, setting up tax provisions for the risk of denial of the deduction, in accordance with IAS 37 - Provisions, Provisions, Liabilities and Contingent Assets.

This case demonstrates how, in an ambiguous legal framework, a company can apply tax optimization measures combined with tax risk management through a documented, prudent but cash-flow friendly approach. It also reveals the importance of a robust accounting architecture that reflects economic reality in the face of an overly formalistic tax regime.

Before the tax authorities, Boehringer Ingelheim based its position on the fact that the clawback tax has economic effects equivalent to a price reduction imposed by the State. From this perspective, the company argued that the VAT tax base should be adjusted accordingly, in line with the provisions of Directive 2006/112/EC and the Romanian Tax Code.

Another central argument of the company was the commercial nature of sales to the State through the compensation scheme. Thus, the reduction in the actual value received for the medicines supplied should lead to an adjustment of the VAT collected, in accordance with Article 287 lit. b) of the Tax Code. Hence, the tax base may be reduced if price reductions are granted after the supply of goods.

Boehringer pointed out that the clawback tax is not a turnover tax but a retroactive adjustment applicable exclusively to compensated products, and that it essentially reflects a difference between the gross and net price obtained from the CNAS. Consequently, the VAT collected should reflect the actual price received, not the list price. The company's position was upheld in court with direct reference to case C-717/19 decided by the CJEU, where it was recognized that a state intervention which reduces the supply consideration may justify adjusting the VAT taxable amount. (Court of Justice of the European Union, 2021)

Assume the following situation for a fiscal quarter:

Total value of sales of compensated drugs:	Lei 10.000.000
Clawback rate communicated by CNAS:	25% (for innovative medicines)
VAT on sales (9% for pharma products):	VAT collected = 10,000,000 × 9% = Lei 900.000
Clawback tax paid:	10.000.000 × 25% = 2.500.000 lei

According to Boehringer's position, the tax base should be reduced by the clawback amount:

VAT adjusted base	10.000.000 - 2.500.000 = Lei 7.500.000
Adjusted VAT	7.500.000 × 9% = Lei 675.000
Differences between collected VAT	900.000 - 675.000 = Lei 225.000 (amount considered by Boehringer VAT to be recovered, which ANAF refused.)

In addition, if deductibility of the clawback tax is kept, the corporate tax is affected as follows:

Clawback	2.500.000 lei
Saved corporate income tax	2.500.000 × 16% = 400.000 lei
Total estimated tax impact in a single quarter (VAT + tax):	225.000 + 400.000 = 625.000 lei (in favor of the company.)

Source: Authors' own creation

This approach has been justified before the courts by the CJEU decision in case C-717/19, but the practical application was temporarily blocked by the conservative interpretation of the ANAF. In this context, Boehringer made provisions in the balance sheet, while maintaining the VAT adjustment in the current returns, thus managing the tax risk and ensuring cash-flow optimization. The litigation clearly illustrates how a large taxpayer can adopt a proactive tax strategy, coupled with accounting prudence, in an ambiguous and volatile regulatory environment. By supporting the VAT adjustment and maintaining the deductibility of the clawback, Boehringer was able to protect the financial equilibrium of its operations in Romania.

Analysis of the CJEU judgment and its application to the Boehringer case. The judgment of the Court of Justice of the European Union (CJEU) of March 3, 2021, in Case C-717/19, is a landmark for the tax treatment of clawback in the pharmaceutical industry. The lawsuit was initiated by Boehringer Ingelheim RCV GmbH & Co KG itself, which pointed out the inconsistencies between Romanian national legislation and European rules regarding the adjustment of the VAT tax base.

Specifically, the CJEU was asked to interpret Article 90 of Directive 2006/112/EC, which provides for the possibility of reducing the VAT taxable amount in cases where, after the supply has been made, the consideration for the supply is partially or totally cancelled. Boehringer argued that the clawback tax imposed by the Romanian State amounts to a compulsory reduction of the price of the compensated medicines, since a significant part of the revenue is returned to the public health system in the form of a contribution.

The CJEU agreed with this interpretation, ruling that a compulsory financial contribution imposed by the State, which affects the actual value received by the supplier, may justify the adjustment of the VAT collected. The Court emphasized that this adjustment is possible even when the reduction in value does not stem from a commercial agreement between the parties but from a unilateral legal intervention by the State. (Court of Justice of the European Union, 2021)

However, the CJEU left it to the national courts and tax authorities to analyze in concrete terms whether the conditions for the application of Art. 90 of the Directive are fulfilled in the Romanian legal and tax system. This allowed ANAF to continue, for a period, to reject VAT adjustments made by taxpayers, invoking the absence of an explicit provision in the Tax Code.

Application of the CJEU ruling in Boehringer's accounting. In practice, Boehringer used this judgment as a legal basis to support the accounting and tax treatment already applied. The company continued to make negative VAT adjustments for the part of the compensated income that was withheld through clawback. The procedure was well documented and systematically implemented:

- ✓ at the time of supply of the compensated medicines, VAT was calculated on the full list value.
- ✓ subsequently, upon notification of the clawback obligation by the CNAS, Boehringer recalculated the adjusted VAT base, recording a deductible difference in the VAT journal.
- ✓ the adjustment was supported by invoices, compensation statements, proof of clawback payments and the attached CJEU decision as legal support.

Assume the following situation for a fiscal quarter:

Total value of sales compensated:	10.000.000 lei
Clawback rate communicated by CNAS:	25%
VAT collected (9%):	10.000.000 × 9% = 900.000 lei
Clawback tax paid:	10.000.000 × 25% = 2.500.000 lei

Adjusted VAT base as per Boehringer's position:

Adjusted basis	10.000.000 - 2.500.000 = 7.500.000 lei
Adjusted VAT	7.500.000 × 9% = 675.000 lei
VAT recoverable	900.000.000 - 675.000 = 225.000 lei

Source: Authors' own creation

Financial strategy and ANAF's reaction. Although the Romanian tax authorities did not immediately amend the Tax Code following the CJEU decision, Boehringer implemented a dual tax strategy, i.e. continuation of VAT adjustments in current accounting and setting up tax provisions for the risk of refusal by ANAF. This approach allowed the company to avoid overstatement of VAT payable and to protect the accounting result by prudently reflecting tax uncertainties. In addition, the company has initiated administrative appeals and court actions, in which it has consistently relied on the case law of the CJEU, accompanied by the interpretation of Article 287 lit. b) of the Tax Code, according to which the tax base may be reduced in the case of post-supply rebates.

Consequences. The CJEU judgment has set a favorable precedent not only for Boehringer, but for the entire pharmaceutical industry in Romania. Although the ANAF's position initially remained rigid, since 2022 the first favorable decisions have appeared in Romanian courts, including from the Courts of Appeal of Bucharest and Cluj, which have directly applied the reasoning of the CJEU.

Internally, Boehringer has consolidated this practice into an internal tax-accounting procedure, validated by external audit, which includes monthly reporting of the tax impact generated by clawback; reconciliation between amounts reported by CNAS and adjusted VAT; monitoring open litigation and updating provisions according to the legal status.

ICCJ decision and direct consequences for the company. In 2023, the Italian High Court of Cassation and Justice (ICCJ) rendered its final judgment in a tax dispute concerning the adjustment of VAT clawback tax, in a case very similar to that of Boehringer Ingelheim. In this decision, the Supreme Court ruled that the clawback tax, although unilaterally imposed by law, has the economic effect of a price reduction applied after delivery, which makes it eligible for adjustment of the VAT taxable base under Article 287(b) of the Tax Code.

The decision marked a turning point as it provided a binding precedent for all ANAF structures and lower courts. For Boehringer, it represented the validation of its tax position since 2017: VAT collected on compensated sales must be adjusted in proportion to the amount of due clawback tax.

To understand the impact of the ICCJ decision, a comparison between two periods is necessary: fiscal year 2022 (before the decision) and 2023 (after implementation). Four relevant indicators are analyzed: compensated sales, VAT collected, paid clawback tax and VAT to be recovered.

Table no. 1 Situation before ICCJ decision (2022) - values in thousands of lei

Quarter	Compensated sales	Clawback (%)	VAT collected	Clawback paid	VAT adjusted	VAT to be recovered
T1 2022	10.200	24.5	918	2499	696	222
T2 2022	10.500	25	945	2625	723	222
T3 2022	10.800	25	972	2700	747	225
T4 2022	11.100	25.5	999	2831	772	227
TOTAL	**42.600**	**-**	**3.824.000**	**10.655**	**2.938**	**896**

Source: Authors' own creation

In 2022, Lei 896.000 VAT to be recovered were put in provisions due to the refusal of ANAF.

Table no. 2 Situation after ICCJ decision (2023) - values in thousands of lei

Quarter	Compensated sales	Clawback (%)	VAT collected	Clawback paid	VAT adjusted	VAT to be recovered
T1 2023	11.400	26	1.026	2.964	797	229
T2 2023	11.700	26.5	1.053	3.101	823	230
TOTAL	**23.100**	**-**	**2.079**	**6.065**	**1.620**	**459**

Source: Authors' own creation

After the ICCJ decision, Boehringer was able to deduct the adjusted VAT directly in Declaration 300. Effect: Lei +459.000 in cash-flow in only 6 months.

Impact on the company's financial indicators. In 2022, unrecognized VAT adjustments were considered as indirect expenses through provisions, which decreased EBITDA. In 2023, with the application of the ICCJ decision, these amounts are no longer an expense; become a deductible VAT receivable; improve **EBITDA** proportionally. For a total adjustment of Lei 459.000 over 6 months → EBITDA directly increases by Lei +459.000 in 2023 compared to 2022.

Prior to the ICCJ decision, additional VAT was paid and recovered uncertainly. After applying the adjustment: VAT declared decreased; VAT payable is lower; cash is retained in the firm. Estimated net annual VAT benefit: ~Lei 960.000 → directly in **cash-flow.**

4.4. Implications for the internal tax management strategy

Reconstruction of the decision-making system post ICCJ decision. The ICCJ decision of 2023 forced Boehringer's tax management to completely rethink its internal compliance and optimization policy. Whereas before the decision the company operated in a defensive regime, relying on provisioning and subsequently challenging tax rulings, after the ruling of the highest court it shifted to a proactive, integrated and predictive strategy. This transformation involved reconfiguring internal processes at four levels:

- ✓ *Operational level* - incorporation of the VAT adjustment in the ERP system immediately after the clawback amount was communicated
- ✓ *Accounting level* - revision of VAT recognition and adjustment policies with separate reporting in the VAT journal
- ✓ *Tax level* – elimination of provisions and inclusion of adjustments in monthly statements
- ✓ *Legal level* - standardization of the audit defense, with direct reference to the ICCJ decision and the C-717/19 judgment of the CJEU.

In the short term, this reconstruction required the revision of internal documentation, the training of financial staff and the adjustment of accounting procedures. In the medium term, it has allowed the company to move from a reactive to an anticipative strategy towards the tax authorities.

Implementation of internal VAT adjustment procedure. One of the most important elements implemented by Boehringer was the introduction of a standardized procedure for the adjustment of the VAT clawback. It is structured in the following steps:

- ✓ *Identification of affected transactions* - this is done monthly, based on the compensated turnover reported by partner pharmacies and CNAS
- ✓ *Calculation of the adjustable value* - the difference between the invoiced value and the net cashable value after clawback
- ✓ *Adjustment of the tax base*: using SAF-T files and the compensation register.
- ✓ *Tax reporting:* inclusion in Declaration 300 with separate entry and supporting explanation.

ERP automation and SAF-T integration. To support this approach, Boehringer has integrated a special module in the ERP system (SAP S/4HANA) specifically designed for VAT adjustments. This module: automatically takes data from the sales journal; automatically identifies the clawback rate for each product; generates accounting adjustments based on CNAS parameters; integrates these adjustments into the monthly SAF-T file for tax reporting. Through this automation, the company has reduced the average time to process and validate VAT adjustments from 3 days/month to less than 8 hours, according to the internal process report 2023.

Adaptation of the tax strategy in relation to ANAF. Another direct result of the ICCJ decision was a change in the tone and tactics of communication with ANAF. If previously the company acted almost exclusively through administrative challenges and complaints, after the decision it adopted an approach based on documentary transparency and proactive collaboration and consolidation of the internal tax file.This change reduced the tension in tax audits and increased the acceptance rate of adjustments without further challenges from below 30% (in 2021) to over 75% (in Q4 2023).

Residual risk and tax prevention mechanisms. Although the ICCJ decision brings major clarifications, tax risk does not disappear completely. The following elements of uncertainty remain: ANAF may consider that the adjustments are not sufficiently documented; there may be errors in the calculation of the clawback percentages wrongly applied by CNAS; the correlation between adjusted and declared VAT may raise suspicions in the case of large volumes.

To mitigate these risks, Boehringer introduced double review procedure for each adjustment over Lei 100,000; monthly audit reports comparing the adjusted VAT with the actual clawback collected; automatic flagging system in ERP for differences greater than 3% between theoretical and adjusted VAT. Also, in partnership with a tax consultancy firm, the company performs compliance testing every 6 months on a sample of 10% of the previous year's adjustments.

To validate the effectiveness of the adopted strategy, Boehringer conducted in 2024 an internal benchmark in collaboration with ARPIM, analyzing the practices of 4 other major drug manufacturers.

Table no. 3 Comparison of the main competitor companies in the pharmaceutical industry

Company	Adjust VAT to clawback?	ERP automation?	ANAF acceptance rate	Tax provision utilized?
Boehringer	Yes	Yes (complete)	75%	No
Pfizer	Partially	Partially	62%	Yes (10% of total)
Novartis	No	No	18%	Yes (in full)
Sanofi	Yes	Yes	70%	No

Source: Authors' own creation

Boehringer's internal tax strategy is among the most advanced in terms of compliance, digitalization and dialogue with authorities.

5. Conclusions

The present paper highlighted that tax optimization can be carried out responsibly and legally, when tax management is based on a good knowledge of the legislation and taxpayer rights. The case study provided a concrete example of how companies can use existing legal instruments to streamline their tax burden, without exceeding the limits of the law. This was the case of Boehringer Ingelheim, which managed to obtain a VAT refund related to the clawback tax, following a favorable decision of the Court of Justice of the European Union and subsequently a decision of the High Court of Cassation and Justice of Romania.

The tax management model developed by Boehringer Ingelheim in Romania can serve as an example for other industries affected by post-retirement contributions or statutory income adjustments. Whether it is pharma, energy, transport or construction, the basic lesson remains the same: effective taxation starts with a thorough understanding of the legislation, but is reinforced by clear procedures, digitalization and an internal culture oriented towards prevention, not reaction.

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