

CRIME OR CREATIVE ACCOUNTING WHILE DOING BUSINESS

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This paper investigates the creative accounting as a tool for enhancing the business activity. It is possible and legal binding to minimize tax liabilities and improve the financial statement. In Poland, there is a fine line between crime (tax fraud) and lawful practice. Qualitative research was conducted by asking businessman if there are practicing any creative accounting methods or tax optimisation (not tax evasion) to obtain funding from any external sources or to mitigate tax payments. The results of the research suggest that companies appreciate the legal methods of creative accounting, but they have concerns about committing a crime by the tax optimisation process. Polish judicial system do not introduce which actions are by law and which of them are illegal. Due to the legal nature of tax systems and economic freedom of individuals who do business the analysis of the possibility of applying financial manipulation methods without committing a crime seems necessary.

Keywords: Creative accounting, Crime, Tax optimisation, Financial manipulation.

Introduction

In recent years, the authorities of countries belonging to the European Union have taken measures to counteract the expansion of organized criminal activity consisting not only of trafficking in human beings, drug trafficking but mainly on tax extortions. For this reason, state authorities introduce new settlements in the field of corporate reporting, but also new solutions in the scope of tightening corrective measures for criminal acts aimed at broadly understood economic turnover. Besides, the legal system applicable in Poland permits the use of financial data manipulation, for which the statutory definition, there is no full agreement among the representatives of the doctrine. Interpretation dilemmas pose issues not only for understanding the manipulation institution, but also accounting fraud in the context of a prohibited act. The purpose of this article is to attempt to indicate the difference between manipulation and fraud and the impact of the above actions on the financial result presented in the financial statement about the current financial position of an economic entity.

Literature Review

Analyzing overinterpretation of the law in the context of accounting principles and breaking the law in force, needs to pay attention to the phenomenon of creative accounting, which is known all over the world, and in the face of progressing globalization processes, it can be said that its scope does not know boundaries. Creative accounting is used not only by large US corporations but also by small and medium

enterprises around the world. Gut (2006) notes the creative accounting as a disease covers the whole world. It seems, however, that perceiving the use of creative accounting methods as a disease is a too far-reaching statement. The perception of creative accounting in a negative way results from erroneous identification with illegal activities. Only when looking at the users of economic information, one can accept the view that as a result of the mechanisms of creative accounting, they are misled. Nevertheless, the analysis of this phenomenon requires a wider view, and its assessment only from the perspective of information users is incomplete, which makes identifying this phenomenon with the disease a mistake.

The creative accounting shows the possibilities of presenting the financial data of the enterprises. Data which are presented in financial statements are needed for the managerial decision process, they are used by the investors, by the managers but also by banks and other financial institutions. Park (1958) revealed that accountants should anticipate the demand for informational needs of financial statements and try to educate the users of it. It will help in providing not only the economic information but also to realize the future needs of their users. The key to the success is the open-minded attitude of the accountant, who uses all the creative opportunities and creative ideas into the practice. In this way, creative accounting provides the services which help entities to present their condition creatively, but with all respect to accounting rules and expectancy of their users. As noted by C. Park (1958), the key to understanding the processes taking place in creative accounting is their proper analysis, which consists in discovering in advance the intentions and needs of accountants and other users of information flowing from the accounting system. Kedia and Philippon (2009) add that the fraudulent accounting may be costly for shareholders and future investors.

Although the vast majority of companies present their financial results in a fair and honest way, a significant proportion of them apply elements of creative accounting to conceal the truth and hide the actual results achieved. The use of the methods of creative accounting allowed by law to obtain tangible and intangible benefits by persons managing business units is in fact based on good knowledge of the law as well as economics. Our knowledge allows us to use the provisions and legal regulations, to present profit unit in a better light and can not be regarded as exclusively negative.

Hinz (2010) points out that the phenomenon of not only creative accounting but also economic crime is always up-to-date and extremely risky in itself. In his opinion, such terms as fraud, fraud, manipulation or corruption do not differ from each other and are identical. Proper and precise delineation of these concepts is extremely difficult, but also necessary for the appropriate process of preventing and counteracting such events.

Bussman (2004) notes that both creative accounting and economic crime are becoming an increasing challenge not only for the economy but also for society. The most often diagnosed phenomena are, first of all, financial frauds, fraud, bribery, corruption, and cybercrime (but also money laundering and industrial espionage). An important issue is a distinction between creative and aggressive accounting.

Although the concepts of creative or aggressive accounting in the science of this subject have been known for many years, their negative economic effects were most noticeable at the turn of the 20th and 21st centuries, which contributed to widespread interest in the phenomenon, not only by representatives of accounting science, but also public opinion (Gut 2006).

A series of accounting scandals also took place at the end of the 20th century, where over the years from 1980 to the beginning of the new century, multi-million scandals covered practically every sector of the economy. The most well-known are Waste Management, municipal waste management, Sunbeam, or Enron or WorldCom. It is worth asking whether all these scandals were detected accidentally, or whether it was a matter of media pressure, which undoubtedly played a significant role, and in particular, they drew the attention of the public, arousing caution in investing in it. Corruption and accounting crimes existed and will continue to exist. The mechanisms of creative accounting and manipulation are perceived as a pendulum that balances from one scandal to another, taking the form of the most-severe bankruptcies and falls of enterprises for less-significant crimes and scandals. This pendulum mechanism is a result of human nature, business activities, and legal regulations, and although it can be influenced and tried to give it a proper course of action, it will probably never disappear, and its effects will be felt for the economy (Singleton, Singleton 2010).

The mechanisms of creative accounting have their source not only in the activities of fraudulent accounting. They came from the concept of the economic crime, and they are related to the so-called white-collar criminals. This type of crime indicates a perpetrator, as a person with high social status, a lot of trusts, who, through the use of their professional position, commit to criminal activities, including on accepting bribes, theft, fraud (Sutherland 1940).

It should be pointed out that the boundary between the use of creative accounting methods and principles and economic crime is exceptionally uncertain (Briloff 1979).

The right position is presented by Cebrowska (2006), recognizing that the activities of creative accounting and the manipulation of financial data are an original element until the result is not the presentation of financial results of the unit will be inconsistent with the facts. Only if there is a presentation of results that reflect a non-existent legal state, it can be said that there was committed a crime. Nevertheless, the manipulative operation of accounting will be an element of creative accounting, as long as its features do not bear the characteristics of a prohibited act. It should be emphasized that although the general perception of creative accounting activities is negative, it should be remembered that creative accounting is not related to fraud or accounting fraud. Such actions should be identified with fraud and events that are unlawful acts. Financial defraudations and embezzlement do not belong to the group of data manipulation in the manner permitted by law. These are actions aimed only at the improper application of accounting principles in such a way as to conceal certain information. Creative accounting should be seen as a creative implementation of accounting principles that are used by an enterprise lawfully. Regulations regulating accounting allow for many methods and solutions, which the law does not prohibit, but does not speak about them directly. The feature of creative accounting is the ability to correctly interpret legal provisions in such a way that, with the correct application of the content of the regulations, achieve the intended goal, and that the presented economic events reflect the proper nature of the operation and its actual content (Gut 2006). Schneider (2007) emphasizes that creative accounting is an indispensable tool used in enterprises to create their image. It is necessary to answer the question whether any action aimed at presenting the company's image in a better light bears the hallmarks of negative attributes attributed to aggressive accounting? It can be assumed that as long as this is legal, negative features should not be assigned to it. As rightly pointed out by Krzywda (Przybylski 2002) in the summaries of the 3rd Annual Auditing Conference, creative accounting was not created by accountants from Enron because they used only the proper accounting feature of creativity that lies in it from the very beginning. Because of the challenges of modern accounting, it is not possible to depart from creativity.

McBarnet and Whelan (1999) reported that the creative accounting methods are the attractive solution for the company managers because by these techniques they can manipulate key ratios used in market analysis but also escape the shareholder control and boost reported profits or minimize reported losses. There is intense pressure on auditors to accept the interpretations of accounting standards but when there is no crime committed, why the auditors should not allow it?

According to the representatives of the doctrine, creative accounting is intended to mislead shareholders and other interested persons about the assets and finances of the unit. The problem arises when the involved parties find out about the company's condition after the time because the information from the financial statements did not give such knowledge.

Entrepreneurs most often manipulate and overinterpret accounting principles in the context of the accrual principle and the principle of commensurability. An example of a permissible operation, however, being subject to data manipulation, is the issue of risk and benefits transfer, which concerns the provisions of the contract and the shift of the moment of receipt of a given commodity and performance of the service. Thanks to such behavior, the company can show a positive financial result, despite the fact that there was no real financial gain. On the other hand, in the case of the proportionality principle, which concerns the direct relationship of costs with the income obtained, the issues related to the conducted investments will be subject to manipulation. Unlike improvement from renovation, it will affect the depreciation of individual assets in the company and will directly affect the company's result in the financial statements.

When addressing the issue of the analysis of over-interpretation of legal provisions and accounting principles in the context of creative accounting and manipulation, attention should be paid to the accounting principles in force and their impact on the presented financial result. Since the effect of the accounting system is primarily the presentation of data contained in the financial statements, in a way that reflects the reliable and transparent financial position of the entity and its business result, activities consisting in overinterpreting accounting principles that do not go beyond the permitted actions (which are the result only the mechanisms of creative accounting), will rely mainly on the use of insinuations regarding the accounting principles in force, and not on their violation. On the other hand, if the accounting system claims to be illegal and uses methods of fraudulent accounting, there will be a violation of the accepted accounting principles, which is not allowed in the light of criminal and fiscal penal laws (Wasowski 2003).

In summary, accounting principles have the only and superior function of any accounting system solutions. Although some of the activities of the bodies managing the units that keep full books of accounts are allowed by law, data are manipulated by their records. The parties concluding the contract as entrepreneurs create the object and content themselves, however, due to their economic interest, they should not distort the content of financial information, citing legal provisions. For this reason, although there is no violation of the law, users of information are misled and receive distorted details on a given unit.

Over-Interpretation of the Law and Accounting Principles in the Context of a Crime in Poland

The analyze of the mechanisms of creative accounting and manipulation of financial data in the context of prohibited acts, needs to point out that the offense in the light of the Polish criminal law doctrine will occur in a situation in which the action is characterized by social harmfulness of it, to a degree higher than negligible. And the offense will be committed and named as a misdemeanor or crime, which are distinguished by the lower threat of punishment. According to criminal acts related to the manipulation of financial data, it should be noted that they will be aimed at economic turnover. Manipulation and creative accounting may be characterized by criminal acts, but this will only apply to situations determined by the legislator, which include the following prohibited acts: fraud, tax fraud, abuse of trust, managerial bribery, financial fraud, money laundering and unreliable documentation. The above-mentioned examples of prohibited acts, which are subject to penalization in connection with the protection of the proper functioning of business transactions and conduct business by the principles of market economy, are common crimes and usually result from abuse of rights and trust, thus contributing to the damage property insurance. It is impossible to say that the above-mentioned offenses are not related to the activities of creative accounting and data manipulation. On the criminal act, which is penalized by the provisions of the Criminal Code and Tax Penal Code, one can speak in a situation where the manipulation of data was made as a result of the actions of the creative account in such a way that the effect of the actions taken was a false picture of the property and financial situation of the unit obtained through the use of activities that do not fall within the limits of acts generally permitted by law. The operation of creative accounting leads to the manipulation of financial data, which as a result of fraud and the use of fraudulent financial reporting techniques, results in a prohibited act, which is determined by the provisions of the Polish Criminal Code and Tax Penal Code.

Conclusions

In this study was demonstrated that there are possibilities to practice creative accounting methods which are legal and provide a presentation of the financial situation of the company in a better view then it is in fact. That is hugely beneficial for the owners of the company, but it can be harmful to investors and other users of financial data.

In conclusion, it should be emphasized that setting a strict boundary between creative manipulation, creative accounting and fraud is extremely difficult, as is the setting of boundaries between the correct and incorrect application of accounting principles and accounting policy. Although creative accounting has been accompanying business for years and the phenomenon seems impossible to eliminate, it is necessary to indicate the differences of illegal acts, from those allowed, because not every behavior involving the use of creative accounting methods will be a crime. Additionally, it should be stated that both the provisions of the Accounting Act and tax laws have created the possibilities of creating an image of an economic entity, depending on the needs of managing authorities. The use of possible and law-abiding instruments depends only on the level of knowledge, expectations of the board and morality of persons providing accounting, auditing or tax advisory services. The activities of creative accounting and manipulation can contribute to gaining benefits, among others in the form of the sensible planning of tax expenditures.

A worthy consideration of the postulate is the modification of regulations related to the use of methods of creative manipulation, consisting in the obligation to demonstrate in the entity's financial statements, adopted solutions that significantly affect the economic result and the property and financial picture of the company. In the legal system, there must be solutions that allow the selection of methods for creating the effect; however, due to the safety of users of this information, they should be informed about the application of ways that may affect the result presented.

Griffiths (1986) noted that: "Every company in the country is fiddling its profits. Every set of published accounts is based on books which have been gently cooked or completely roasted. It is the biggest con trick since the Trojan horse."

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