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Considerations Regarding to the Taxation on Profit in Romania

Abstract

The profit represents earnings, benefits, advantages, respectively the income of the capital used by a company, representing the differences between the actual incomings and the total outgoings (plus value considered to be the result of the whole capital invested).

The dispositions of the Fiscal Code in the matter of profit taxation must be easy to apply, to increase the compliance level of the tax-payers and to create lower administration costs.

The hereinafter paper makes a review of the actual regulations in the matter of profit taxation, system which is in permanent perfecting development in the context where fiscal reforms must have an important role in the normal progress of economical and financial life. Beyond any general considerations, we can notice that profit taxation shows continuous evolution tendencies also in other member states of the European Union.

Key words: *profit, taxation level, legal frame, incomes, costs.*

Rozważania nad opodatkowaniem dochodu w Rumunii

Streszczenie

Zysk wyraża zarobki, świadczenia, korzyści, odpowiednio do dochodu z kapitału wykorzystanego przez przedsiębiorstwo, przedstawiając różnicę pomiędzy właściwymi wpływami

i całkowitymi wydatkami (plus wartość uznana za rezultat całego zainwestowanego kapitału).

Przepisy kodeksu prawa podatkowego w kwestii opodatkowania dochodu muszą być proste do zastosowania, celem podniesienia stopnia ich przestrzegania przez podatników i obniżenia kosztów administracyjnych.

Niniejsze opracowanie dokonuje analizy aktualnych regulacji prawnych w zakresie podatku dochodowego, który to system stale ewoluuje i jest doskonały, a reformy fiskalne

odgrywają znaczącą rolę w dziedzinie rozwoju ekonomicznego i finansów. Systemy opodatkowania dochodu są poddawane zmianom także w innych krajach członkowskich Unii Europejskiej.

Słowa klucze: *zysk, poziom opodatkowania, ramy prawne przychód, koszty.*

The profit¹ represents earnings, benefits, advantages, respectively the income of the capital used by a company, representing the differences between the actual incomings and the total outgoings (plus value considered to be the result of the whole capital invested).

Profit taxation is a sure source of supplying income for the budget of the state, but it is often affirmed that its fiscal efficiency² is reduced, because of the existing different fiscal evasion methods.

The study has been created with the help of logic method through which there has been created the possibility to capture the structure and internal dynamics of profit taxation system, outlining legal definitions, judicial notions which are specific for the analyzed material. The theoretic basis of the study is made by a presentation of the dispositions of the actual Fiscal Code in the domain and by the selections of some studies from the vast literature in this specialty.

The legal frame – is represented by Law No. 571/2003 regarding to Fiscal Code, with its ulterior modifications and supplements³, Title II “Profit taxation”.

¹ Definition adopted from the Explanatory dictionary of Romanian language; we can find the same notion in other languages, for example in French – *profit*, in German – *Profit*, in Italian – *profitto*.

² The fiscal efficiency of taxation represents assuring its encashment with minimal costs.

³ Modified by: *Law No. 174/2004* for adoption of O.G. no. 92/2003 regarding to the Code of fiscal procedure; *H.G. no. 977/2004* for the modification of the taxation level of certain products; *O.G. no. 83/2004* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *O.G. no. 94/2004* regarding to the regulation of some financial measures; *Law no. 494/2004* regarding to the adoption of O.G. no.83/2004 for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *O.U.G. no. 123/2004* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *O.U.G. no. 138/2004* for modification and completion of L. no. 571/2003 regarding to Fiscal Code; *Law no. 96/2005* regarding to the adoption of O.U.G. no. 123/2004 for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *Law no. 163/2005* regarding to the adoption of O.U.G. no. 138/2004 for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *Law no. 210/2005* regarding to the adoption of O.G. no. 20/2005 for the modification and completion of O.G. nr. 92/2003 regarding to the Code of fiscal procedure; *Law no. 247/2005* regarding to the reforms in the domain of properties and justice, as to some adjacent measures; *O.U.G. no. 203/2005* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *L. no. 343/2006* for

The tax-payers obliged to pay profit taxation are the following: Romanian judicial persons⁴, judicial persons from abroad who develop their activity through a permanent residence in Romania⁵; judicial persons from abroad and non-resident physical persons who

the modification and completion of L. no. 571/2003 regarding to Fiscal Code – disposing the republishing; *H.G. no. 1.514/2006* regarding to the levels of taxable values, taxation, local taxes and other assimilated taxes, like the applicable amendments for fiscal year 2007 - actualizing the amendment levels foreseen by art. 294; *O.U.G. no. 110/2006* for the modification and completion of L. no. 571/2003 regarding to Fiscal Law; *O.U.G. no. 22/2007* for the modification and completion of L. no. 571/2003 regarding to Fiscal Law; *O.U.G. no. 106/2007* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *O.U.G. no. 155/2007* for the modification of paragraph (4) and (5) of art. 263 from L. no. 571/2003 regarding to Fiscal Code; *Law no. 372/2007* regarding to the adoption of O.U.G. no. 110/2006 for the modification and completion of L. no. 571/2003 regarding to Fiscal Code; *O.U.G. no. 50/2008* for the institution of pollution tax for vehicles; *O.U.G. no. 51/2008* regarding to the judicial public help in civil matters (revoking art. 295 paragraph 11 l. b of the Fiscal Code); *H.G. no. 664/2008* regarding to the structure of total taxation expressed in Euro for 1.000 cigarettes; *O.U.G. no. 91/2008* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code, approved through Law no. 90/2009; *O.U.G. no. 94/2008* for the establishment of some measures regarding to the use of electronic passports and the production of some other travelling documents (introduces paragraph 6 of art. 21 and revokes art. 21 paragraph 5 l. c of the Fiscal Code), approved through Law no. 249/2009; *O.U.G. no. 127/2008* for the modification and completion of L. no. 571/2003 regarding to the Fiscal Code; *O.U.G. no. 200/2008* for the modification and completion of L. no. 571/2003 regarding to Fiscal Code, approved with modifications through Law no. 343/2009; *O.U.G. no. 29/2009* for the modification of L. no. 571/2003 regarding to Fiscal Code, approved with modifications through Law no. 256/2009; *O.U.G. no. 34/2009* regarding to the budgetary rectification for year 2009 and to the regulation of some financial-fiscal measures, approved through Law no. 227/2009; *O.U.G. no. 46/2009* regarding to the development of fiscal procedures and the diminishing of fiscal evasion, approved with modifications through Law no. 324/2009; *H.G. no. 960/2009* regarding to the structure of total taxation expressed in Euro for 1.000 cigarettes; *O.U.G. no. 109/2009* for the modifications and completion of L. no. 571/2003 regarding to Fiscal Code; *Law no. 329/2009* regarding to the reorganization of some authorities and public institutions, rationalization of public expenses, sustaining the business environment and respecting the basic agreements with the European Commission and with the I.M.F. (introduces art. 19² which is applied until 31 December 2010); *Law no. 367/2009* for the modification of L. no. 571/2003 regarding to the Fiscal Code; *Law no. 22/2010* for completion of L. no. 571/2003 regarding to the Fiscal Code; *Law no. 24/2010* for the modification and completion of art. 284 from L. no. 571/2003 regarding to Fiscal Code;

⁴ In this sense we are referring to national companies, national societies, autonomous administrations, not taking into consideration the subordination, commercial societies – of any kind of organization and propriety form, agricultural societies and co-operative organizations, financial and credit institutions, foundations, associations etc., constituted according to Romanian law.

⁵ Companies, foundations, associations and any other entities constituted according to the law of another country can become subjects of taxation only when they develop their activity totally or partially through a permanent residence from Romania.

develop their activity in Romania in association without a judicial person⁶; judicial persons from abroad who realize incomes from/or in connection with some immobile properties situated in Romania or from the selling/transfer of the participation titles owned by a Romanian judicial person; physical persons who are residents associated with Romanian judicial persons for incomes realized in the country or abroad from associations without judicial person; judicial persons with social office in Romania, constituted according to the European legislation.

The Romanian judicial persons and the judicial persons with residence in Romania, constituted according to the foresights of European legislation are owing to pay taxation upon profit realized from any source – from the country or from abroad. Judicial persons from abroad, who develop their activity through a permanent residence in our country, owe this taxation upon the profit assigned for the permanent residence.

Remission for taxes upon profit are accorded for the followings: the treasury of the state; public institutions, public funds, implying their own incomes and the realized and used availabilities according to Law no. 500/2002 regarding to public finances and Law no. 273/2006 regarding local public finances; Romanian foundations constituted after a testament⁷; religious cults, for: incomes realized from the production and sale of objects and products which are necessary for cult activities, according to law, incomes obtained from rents, other incomes obtained from economical activities, incomes from money compensations, obtained according to the restoring measures foreseen by the laws referring to the reconstitution of property rights, with the condition that the respective amounts must be used in the current year or in the following years for the maintenance and functioning of the cult units, for construction, reparation or consolidation works by the cult houses and of the ecclesiastic buildings, for education, for delivery alone or in partnership of social services, accredited according to law, for special actions and other nonprofit activities of religious cults, according to law; private accredited educational institutions, like those authorized, for

⁶ Any association in participation, any group of economic interest, civil society or other entity and which is no distinct tax-payer person.

⁷ According to O.G. no. 26 from 30.01.2000 regarding to associations and foundations published in the Official Monitor of Romania no. 39/31.01.2000, with ulterior modifications and completions, the foundations constituted after a testament are the subjects of law constituted by one ore more persons, which based on a judicial document after a decease, is creating a permanently and irrevocably affected patrimony in realizing an aim with general or in some cases communitarian interest.

the incomes used in the current year or in the following years, according to the Educational Law no. 84/1995, republished with the modifications and ulterior completions and O.U.G. no. 174/2001 regarding to some measures for the development of financing of high education, with the ulterior modifications; property associations, according to the dwelling Law no. 114/1996, republished, with the ulterior modifications and completions, for the incomes obtained from economical activities and which are used or are going to be used for the development of the utilities and of the efficiency of the building, for maintenance and the reparation of the common property; the National Bank of Romania; nonprofit organizations⁸, syndical organizations and employers organizations are exempted from the payment of profit taxation for the following types of incomes: ♦ enrolment dues and taxes of members; ♦ money or contributions of other nature from the members and sympathizers; ♦ registry taxes established according to the actual law; ♦ donations, money or goods from sponsorship; ♦ dividends and interests obtained from the emplacement of availabilities resulted from the exempted incomes; ♦ incomes realized from occasional actions like: found raising events with participation tax, celebrations, raffles, conferences, used with social or professional aim, according to their status; ♦ resources obtained from public funds or from not redeemable finances etc.

In Romania the fiscal year is the same with the calendar year⁹. As a general rule the profit is taxed upon a level of 16%. There are exceptions, for example night bars, night clubs, discotheques, casinos and sport bets if the taxation upon profit for the above mentioned activities is smaller than 5% from that incomes it is paid a tax of 5% applied for these

⁸According to art. 15 paragraph 2 from L. no. 571/2003 regarding to the Fiscal Code, nonprofit organizations, syndical organizations and employers organizations are exempted from the payment of the profit taxation and for the incomes obtained from economic activities realized to the limit of the lei equivalent of 15.000 Euro, in a fiscal year, but not more than 10% from the total incomes exempted from the payment of profit taxation.

Example:

Total exempted incomes: 30.000 RON

10% from 30.000 RON – 3.000 RON

15.000 Euro x 32.000 – 480.000.000 / 48.000 lei

The exemption is only 3.000 RON

45.000 RON is taxed with 16%.

⁹ In case of foundation of a tax-payer in a fiscal year the taxation period begins with: either the registration date of the tax-payer by the commercial registry; or the date of registration by the competent judicial authority or with the date of signing or beginning an association contract, in case of associations with no new judicial person.

realized incomes (for example: in case of a profit of 20.000 lei, the taxation will be $20.000 \times 16\% = 3.200$ lei. The current income obtained from the earlier mentioned activities – night bar, discotheque, etc – is 75.000 lei. 5% from 75.000 lei is 3.750; $3750 > 3.200 \rightarrow$ taxation of 5% upon the income of 75.000 lei).

The calculation formula of the taxable profit is the following¹⁰:

$P_i = V - C - V_n + C_n \pm$ similar elements V and C, where,

P_i – taxable profit

V – income realized from any source;

C – expenses in order to realize the income;

V_n – not taxable incomes;

C_n – not deductible expenses.

According to law, not taxable incomes are: dividends obtained from a Romanian judicial person; favorable value differences of participation titles, registered as a result of the incorporation of stores, benefits or emission primes from judicial persons who own participation titles, like the favorable value differences resulting from the evaluation of participation titles and of the long term obligations, effectuated according to the accounting regulations. These are taxable on the transfer date with free title, in case of assignment, retreat, the dissolution of financial investments, or on the date of the retreat of the social capital by the judicial person who owns the participation titles; incomes from the annulment of costs for which was no deduction approved, incomes from the recovery of the non-deductible costs and also the incomes from the restitution or annulment of some interests and/or delay penalties for which there was no deduction approved; not taxable incomes,

¹⁰ The incomes and costs calculated by the establishment of the taxable profit are those from the accountancy, like any other similar elements to incomes and costs, from which it is deducted the amount of non-taxable incomes and it is cumulated with the non-deductible costs. Among the elements which are similar to costs we can mention:

-Unfavorable differences of exchange courses, resulted after the evaluation of liabilities and debts in currency, registered in the accountancy register in the reported result, as a sequel of transposition;

-The costs with the non-amortized value of the research costs, development costs and of those of fix means like inventory objects which were registered in the reported results;

-Unfavorable differences between the selling price of the own participation titles and their buying price or re-buying price, registered at the date of the certain transaction.

special foreseen in agreements and memorandums accepted through normative documents¹¹; beginning with 01.01.2007 there have not existed taxes obliging the dividends obtained from a Romanian judicial person – mother-company, from its branch situated in a member state, with the condition that the Romanian judicial person cumulates the followings: the judicial person pays profit tax according to law, without the possibility of an option or exemption; owns minimum 15% from the social capital of a judicial person from a member state, respectively minimum 10% beginning with 01.01.2009; on the date of registration of the income from dividends he owns this earlier mentioned minimum participation, for an uninterrupted period of at least 2 years¹².

The deductible costs are those paid with the aim of realizing taxable incomes (costs with the realization and commercialization of goods; costs with service delivery; with execution of works etc.). We can use the following examples: costs with packages, for the period established by the tax-payer; some expenses, according to law, with work protection and costs for preventing working accidents and professional illnesses; costs representing contributions for working insurance to eliminate professional risks; advertising and publicity costs in order to make the society, the products or the services popular, based on a written contract, as well as the costs associated with material productions which are necessary for the transmission of the advertising message; costs for the formation and professional training of the employees; costs for environmental protection and for conservation of resources; registration taxes, contributions paid for the commercial and industrial registry, for syndical and employment organizations etc.

There are also costs which are only limited deductible, like: protocol costs in a limit of 2% applied upon the difference resulted between the total amount of taxable incomes and the total costs for the taxable incomes, others than protocol costs and the costs with profit

¹¹ Tax-payers for who through different agreements, memorandums the situation of taxation exemption for the profit of certain activities was foreseen are obliged to organize and lead an accounting registry in order to delimit the incomes and the costs.

¹² This condition which foresees this minimal 2 years must be understood beginning with the decision of the European Court of Justice in the connected cases: Denavit International BV, VITIC Amsterdam BV and Voormeer BV vs. Bundesamt für Finanzen – C – 284/94, C – 291/94, C – 292/94. This way in the situation when at the registration date of the dividends by the mother company, judicial person from abroad from a member state, if the condition of the minimum 2 years is not fulfilled, the income from the dividends will be taxable. Later, in the fiscal year when the condition is fulfilled, the tax-payer will have the benefit of a recalculation of the profit taxation of the year when the taxation was established – for this the tax-payer must give an adjusting declaration regarding to the profit taxation.

taxation¹³; the amount of the costs with the separation allowance given for the employees for travels in Romania and abroad, in a limit of 2,5 times more like the legal limit established for public institutions; social expenses, in a limit of 2% applied upon the value of expenses with the salaries of the employees, according to Law no. 53/2003 regarding to Employment code¹⁴ (for example, benefits for motherhood, benefit for funerals, benefits for illnesses etc); expenses with allowances and stores, in the limit foreseen by the Fiscal Code.

Non-deductible costs are those, which even if paid by the tax-payer with the aim of realizing its object of activity, cannot diminish the taxable incomes of the tax-payer – the fiscal law considering them “useless” in realizing the activity which is the subject of taxation. This way we can enumerate: interests/payment delay increments, amendments, confiscations at delay penalties for the Romanian/foreign authorities, according to the legal foresights; expenses done in the benefit of the shareholders¹⁵ or of the associates, others than payments for delivered goods or services at the market price of these goods or services; personal expenses of the tax-payer with the profit tax, implying those representing differences from former or current years, as well as the profit taxes or the income taxes paid in another country; costs registered in the accountancy without justifying document, according to law, through which the operation or the registration is proven; costs with sponsorships and/or patronizing and expenses with private grants, according to law.

The tax-payers who effectuate operations of sponsorship/patronizing or those who offer private grants, diminish the tax on profit with that certain amount, if the total of these expenses fits the following conditions: is on the limit of 30/00 from the turnover; does not exceed 20% from the tax upon the profit.

The tax-payers are obliged to declare and to pay the profit taxation three times a year until the date of 25 of the first month of the trimester following the one for which the taxation

¹³ The calculation basis to which is applied the 2% level represents the difference between the total incomes and the registered costs.

¹⁴ Law no. 53 from 24.01.2003 – Employment code published in the Official Monitor Oficial of Romania no. 75 from 05.02.2003.

¹⁵ It is considered to be expenses in the favor of the participants the followings:

1. Costs with amortization, maintenance and reparation of the vehicles used by the participants in their favor;
2. Costs with rents and maintenance of the office used by them;
3. Other expenses in their favor.

was calculated¹⁶. According to law the banking commercial societies/Romanian judicial persons and the branches of the banks from Romania, foreign judicial persons pay the profit tax annually – making in every trimester anticipated payments¹⁷ (the anticipated payments must be done until the date of 25 of the trimester following the one for which the taxation is paid). The term of the annual payment is the same with the term of the registration of declaration of profit – date of 25 April of the year following the one for which the taxation is calculated.

The nonprofit organizations pay the tax annually until 25 February of the year following the one for which the taxation is calculated.

In conclusion we can affirm that the Romanian judicial reality after 1989 has registered different reforms also in the fiscal matters, which entail not only researches but also the interpretation of fiscal notions. Because of these reasons it is also necessary to study the knowledge regarding to the mechanisms of profit taxation in Romania.

¹⁶ Beginning with 1 January 2013, by means of the Fiscal Code it is regulated the option for these tax-payers to use the system of anticipated payments of the profit tax. However, in this actual national and international economic context, there is needed the modification of the Fiscal Code in the sense of maintaining the anterior foresights in the matter of the payment of profit tax, giving up the idea of anticipated payments; these measures are needed to sustain the business environment in the time of economic crisis.

¹⁷ Each of the anticipated payments, in the account of the annual profit tax represents an amount of one fourth from the total profit tax for the precedent year, actualized with the inflation index, estimated together with the elaboration of the initial budget of the year for which the anticipated payments are made, until the date of 25 of the following month of the trimester for which the payment is made. The profit tax for the precedent year, on the basis of which the anticipated payments are determined, is the profit tax according to the declaration about the profit of the precedent year, without taking into consideration the anticipated payments already made in that year.