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TAX AND STATEMENT MATTERS OF THE INCOME TAX FOR THE YEAR 2010

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Abstract: *The numerous legislative changes that occur from one financial year to another are not always able to clarify points of divergence existent between establishing the tax profit and the accounting one. Thus, accountants are sometimes put in difficulty, regarding the obligation to present the accounts respecting the principle of a true and fair view and the desire to optimize the tax cost of their business. The fact is that in the absence of specific accounting rules, the tax normative is set as a practical normative. In the fiscal side, there are clear law provisions governing each type of tax which must be respected. The tax base is the tax result and taxation,, by imposing strict rules, is trying to balance the general tendency of the taxpayers to minimize the tax due.*

Key words: *profit tax, taxable income, deductbility, tax loss, tax period, tax declaration.*

1. Introduction

Taxes are the most important financial resource of the state and the oldest one, in order of appearance of the public revenues.

In a general sense, the taxes represent a collection at state's disposal of a part of the incomes or wealth of individuals or legal persons, to cover the public expenditure. This sampling is mandatory as non-refundable and non-state counterpart. An authority competent with tax imposition is the state, having the right to introduce taxes are exerting, most often, through central bodies, and sometimes by central administration of local state bodies.

Among them, stands out one of the main sources of revenue to the state budget, meaning the tax income. This is a direct tax applied to the benefit derived from developing an economic activity.

Any regulation determining the tax profit must include a number of specific elements of that tax, and among these, a very important one is the way of determining it.

2. How to determine the income tax

The taxable income is based on the information provided by accounting, adjusted according to tax rules. The accounting result is the global sum of profit or loss included in the financial year from the account 121 - *"Profit or loss"*, before taxation and is calculated as the difference between revenues and expenses recorded in the accounts (recorded under the accounting rules provisioned by the Accounting Law No. 82/1991, republished with its subsequent amendments), regardless the nature of the activity where they come from or which created them.

Taxable income for the reporting year = *total revenue - total expenses + income related elements expenses related*

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elements - tax deductions - tax-free income + non-deductible expenses

Taxable income *= taxable income for the reporting year - the tax loss to be recovered from previous years*

The tax result is the taxable profit or the fiscal loss for the tax year, established according to the tax rules and depending on how there is calculated the volume of the payable taxes (or refundable).

Tax deductions are usually tax deductible expenses, those that are recognized by the tax rules in calculating the tax income.

According to the Tax Code approved by Law 571/2003, with its subsequent amendments and additions are considered to be elements related to the income:

1. amounts representing the favorable foreign exchange differences arising from the evaluation of claims and liabilities in foreign currencies, registered in the accountancy when the accounting system was changed on account of the “Reported result” as a result of the restatement or transposition, which become taxable on receipt, payment of fees, for restated period or transposed;
2. amounts representing the reserves that were deductible in determining taxable income;
3. income that are taken into account in determining the taxable income, according to article 19, paragraph (3) of the Tax Code.

As regards similar elements to expenditure [2], these are:

1. amounts representing the non-favorable foreign exchange differences arising from the evaluation of claims and liabilities in foreign currencies, registered in the accountancy when the accounting system was changed on account of the “Reported result” as a result of the restatement or transposition, which become taxable on receipt, payment of fees, for restated period or transposed;
2. capitalized management costs in inventories (when that stock was withdrawn from the inventory, the Research & Development expenditure and the value of the fixed means like inventory objects remaining to be recovered, according to the initial period of depreciation, where appropriate;
3. amounts representing expenditure to be taken into account in determining taxable income, according to article 19, paragraph. (3) of the Tax Code.

The category of tax deductions include:

1. tax depreciation;
2. interest expenses and exchange differences carried over from previous period;
3. the deductible legal reserve;
4. recoverable reserves made up by banks, guarantee funds, mortgage companies and credit unions;
5. additional deduction (calculated quarterly or annually, as appropriate) in calculating taxable profits, the rate of 20% of eligible expenditure for research and development;
6. other deductible amounts.

In the case of tangible differences may arise value differences regarding the accounting depreciation and the tax depreciation. These differences arise due to the mismatch between accounting and taxation, to the requirements that each entails, rules related to the useful lifetime of an active, to the used depreciation method. Thus, when calculating the tax profit it will only be considered the tax depreciation.

For the fixed assets which are not owned and used in the production, supply of goods or services, for rental to others or for administrative purposes the tax depreciation is not calculated.

Regarding the tax treatment of the revaluation it should be given a special attention to revalued depreciation of tangible assets. Thus, the depreciation rules will apply to assets, taking into consideration it value determined following the revaluation. The accumulated depreciation at revaluation date is treated in one of the following ways:

- restated proportionately with the change of the accounting gross value of the asset so that the carrying amount of the asset after revaluation, to be equal to its revalued value (this method is often used if the asset is revalued by applying an index);
- is removed from the asset's value obtained after correction with value adjustments and recalculated to the revalued amount of the asset (this method is often used for buildings which are revalued to their market value).

Another situation that must be given due consideration to determining the deductible tax depreciation is the sale or disposal of fixed assets. In this situation it will be deducted the remaining deductible tax depreciation, whether the sales value or recovery value as a result of the quashing is less than this amount.

On the other hand, it should be noted that the accounting depreciation of fixed asset is non-deductible tax expense.

The interest expenses and exchange differences are deductible according to the creditors:

- for the borrowings contracted from persons specialized in credit contracting it shall be granted full deductibility of the interest and for foreign exchange losses;
- for the interests corresponding to other type of borrowings in order to determine the deductibility, it is made the deductibility analysis based on the maximum rate allowed accepted as deductible, and if leverage is greater than 3 or negative, the interest expense is carried forward for deduction thereafter until they are fully deducted.

The legal reserve is deductible up to 5% of the taxable income until the 5th of the share capital subscribed and paid up.

Non-taxable incomes [2] considered in determining the income tax are:

1. dividends received from a resident legal person or in Romania or in the Community or one of the Member States of the European Free Trade Association, where conditions are cumulatively met: pays income tax, no possibility of an option or exception, has minimum 10% of the share capital of a legal person of a Member State, when the income from dividend is record, it has the minimum participation previously provided for a continuous period of at least two years;
2. income from the cancellation costs for which no deduction was granted, the income from the reduction or cancellation of provisions for which no deduction was granted, as well as income from recoveries of non-deductible expenses;
3. non-taxable incomes, expressly provided in agreements and memoranda approved by laws.

Analysing the costs in order to determine the taxable income, they are divided into three broad categories:

1. deductible expenses;

2. limited deductible expenses;

3. ***non- deductible expenses.***

In the category of expenses with limited deductibility we mention:

- the entertainment expenses, up to 2% of the difference between the total taxable income and total expenditure afferent to these incomes other than entertainment expenses and income tax;
- travel expense allowance paid to employees for travelling in Romania and abroad, up to 2.5 times the level set for public institutions;
- social spending to an amount obtained by applying a rate of 2% on the value of staff wages;
- perishability, within the limits set by GD.831/2004;
- expenses representing meal tickets granted by employers within a meal voucher for each employee for each

working day of the month for which distribution is made, but no more than a meal ticket for each working day for which it has been done the distribution;

- provisions, deductible within the limits set by the tax code, depending on the type of provision constituted;
- expenses incurred on behalf of an employee for optional pension schemes, to an amount equivalent in RON of 400 euro a tax year for each participant;
- costs of voluntary health insurance premiums, up to an amount equivalent in RON of 250 euro a tax year for each participant;
- expenses for operation, maintenance and repair for the company accommodation located in the city where is the registered office or where the company has secondary offices, deductible to the extent appropriate areas built, which increase from the tax point of view by 10%;
- the operating expenses, maintenance and repairs related to a permanent headquarter belonging to an individual's personal property, also used for personal purposes, deductible within the appropriate areas available for the company on the grounds of the contracts concluded between parties for this purpose;
- operating expenses, maintenance and repair, excluding those on fuel, for the cars used by persons associated with the management and administration of the legal person, limited to a maximum deductible only one car for every person with such responsibilities.

Among the expenses that are non-deductible:

- own expenditure of the taxpayer with the due income tax;
- interest / delay penalties, fines, forfeitures and penalties for late payment due to the Romanian authorities;
- expenditure on goods of the kind of stock or tangible assets identified as lacking of management or degraded, non-chargeable, for which there were not concluded insurance contracts and related value added tax;
- costs of value added tax on such goods to employees in the form of benefits in kind, if their value was not taxed by withholding at source;
- expenses incurred in favor of shareholders or members;
- expenditure accounted for, not based on a document, to prove that the operation or entry into management have been done;
- costs of taxable income;
- expenses, contributions paid above the limits established or that are not regulated by laws;
- costs of insurance premiums paid by an employer on behalf of the employee, which are not included in the wages of the employee;
- expense management services, advice, assistance or other services, for which taxpayers can not justify the need to supply their activities and for which are not concluded contracts;
- costs of insurance premiums that do not concern the taxpayer assets and those that do not relate the object of activity;
- losses recorded at removal of uncertain or disputed claims, unpaid, for the part not covered by Provision;
- Fees and contributions by NGOs or professional associations related to the work of the contributors and exceed the equivalent in RON of 4000 Euro per year;
- sponsorship expenses and / or patronage and expenditure on private scholarships, granted by law.

3. Legislative changes on the calculation and declaration of profit tax for the year 2010

EGO 34/2009 has brought important and controversial changes regarding the income tax by the introduction of the minimum tax starting from January 1st, 2009, which affected the activities of many companies.

Thus, it was established minimum tax grid for all taxpayers (except those engaged in nature-bars, night clubs, discos, casinos), depending on the total income recorded on December 31 last year.

Subsequently, with effect from October 1st, 2010, by EGO. 87/2010 the minimum tax was eliminated. The provision of the elimination of this tax, together with other provisions of the Ordinance, have created division in 2010, in terms of calculation and declaration of income tax in two tax years. [5]

Thus, in order to complete the tax due for the fiscal year 2010, according to EGO 87/2010 (section 5) the taxpayers who, until 30 September 2010 inclusive, were forced to pay the minimum tax, apply the following rules:

a) ***for the period January 1st to September 30th, 2010*** (the period can be analyzed as separate tax period)

- the related income tax is determined for that period and made the comparison with the annual minimum tax provided in art. 18 paragraph. (3) (recalculated accordingly for the period January 1st to September 30th, 2010, by dividing the minimum annual tax by 12 and multiplying with the number of months for that period), followed by setting the income tax due;
- declaration of income tax and the payment of the tax income relating to that tax period will end no later than February 25th, 2011;

b) ***for the period October 1st to December 31st, 2010*** (considered to be another different tax period)

- establishing the profit tax is consistent with the methodology of calculation provided by Title II of the Tax Code in force since October 1st, 2010;
- the income tax declaration and payment of tax due by the final tax is done until February 25th, 2011, including, for taxpayers who have completed financial year to that date and those who receive higher incomes from cereal and industrial crops, fruit growing and viticulture;
- for the other taxpayers, which complete the computation of tax for the fiscal year October 1st, 2010 to December 31st, 2010, until April 25th, 2011, **including, the statement for income tax** and payment of tax due by finalizing the taxation shall be done by that time, on that date shall be filed the form 101 by which it is updated the tax declared previously, on February 25th, 2011 by the form 100.

For the taxpayers who were not appropriate to pay the minimum tax, establishing the tax on profit for the year 2010 shall be made in the fiscal year and the income tax declaration shall be filed within the time prescribed by the Tax Code.

There are extremely important to take into account in determining income tax for 2010, as it follows [7]:

- the partly deductible expenditure is determined taking into account the related base for each period;
- the limits set for the amount value (400 eur, 250 eur, 4000 eur) are followed throughout the year rather than for the two tax years;
- the indebtedness is calculated for each period;
- in case the protocol budget is overruned, the VAT is calculated for each period exceeded by summing them up;
- each fiscal period of 2010 there are made legal reserve deductions;
- if the conditions for deduction are accomplished, the tax allowances are deducted in each period.

The tax loss recorded for the two periods for the year 2010 shall be recovered under the provisions of art. 26 of the Tax Code, each period being considered fiscal year as meaning the period of 5 years and 7 years [6].

The occurred legislative amendments have made necessary the corresponding adaptation of the form and content of the form 101 *"Declaration of income tax*", as well as for its instructions to be filled in.

Indicators are introduced, which allow stressing out the establishing method of the income tax, according to each period and a series of indicators to allow the identification of some tax facilities for research development activity.

4. Practical examples of setting the tax on profit

Example 1:

A company recorded total revenues in 2009 amounting to 16,656 lei. According to the scale established for the minimum tax, this one due for the period January 1st to September 30th, 2010 a minimum tax of 1650 lei, calculated as follows: minimum tax for the period January 1st to September 30th, 2010 = (2200:12) x 9 = 1650 lei

- *September 30th, 2010 the company presents the following situation:*
- total revenue = 30382.54 lei
- total expenses = 43,280.17 lei

»Accounting result = 12897.63 lei (Loss accounts)

- non-deductible expenses: 1100 lei, representing the minimum tax for the first semester of 2010;

»Tax result = 12897.63 + 1100 (Tax loss) = 11797.63 lei

- *as the company recorded tax loss for the period January 1st to September 30th 2010, there will be recorder the minimum corresponding tax, including for the third quarter of 2010 amounted to 550 lei;*
- *therefore, for the first three quarters of 2010 resulted tax income calculated in amount of 1650 lei, declared by the taxpayer with Form 100;*
- *for the period October 1st to December 31st 2010, which is another tax period, according to legal provisions in force, the income taxes are calculated separately, based on revenues and expenditures related to this period, without taking into account the minimum tax;*
- continuing this example the situation related to the *fourth quarter of 2010 is as follows:*
- total revenue = 119,816.92 lei
- total expenses = 98,491.47 lei

»Accounting result = 21325.45 lei (Accounting profit)

- non-deductible expenses: 2 lei, representing the excess of the Protocol;
- tax loss recorded and reported in the first period can be recovered from October 1st to December 31st 2010, considered a separate taxable period;

»Tax result = 2132.45 0 + 2 - 11797.63 (Taxable income) = 9529.82 lei

»Income Tax for the IV quarter /2010 = 9529.82 x 16% = 1524.77 lei

- *for the completion of the first fiscal period, the company recorded in the form 101 regarding the income tax ,the tax loss, which appears in the statement to line 39 - 'taxable income / tax loss to be recovered in future years; "in section C line 2 of the declaration 101 it is declared the minimum tax corresponding to tax scale, and to line 5, the income tax declared for the said tax period, which in our case is 1650 lei;*
- *for the completion of the 2nd period tax, the form 101 can be filed either by February 25th, 2011, when the calculation is being finalized by this date or until April 25th, 201;, this form will include according to the calculation of tax income, only expenses and income for the fourth quarter of the year 2010, the tax losses carried forward for the previous period and of course the tax profit, which must be 16%.*

Example 2:

Considering the example of a company during the period January 1st, 2010 to September 30th, 2010 calculated a higher tax income than the minimum tax introduced in the key tax. Therefore, the calculation and declaration regarding the tax income will be made taking into consideration a single fiscal period, *namely the financial year January1st to December 31st 2010.*

- *we have the following situation:*
- total revenue = 2998344 lei;
- total expenses = 2782957 lei;

»Accounting result = 215387 lei; (Accounting profit)

- Income tax calculated and recorded for the first three quarters = 25980 lei;

"Gross profit = 241367 lei;

- total deductible expenses in the amount of 7851 lei, of which:

* Protocol non-deductible = 1392 lei;
* 1000 lei fines expenses;
* other non-deductible expenses = 1959 lei;
* sponsorship expenditure = 3500 lei;

»Tax result = 241367 + 7851 (Taxable income) = 249 218 lei

"Accumulated income tax for 2010 = 249218 x 16% = 39875 lei

- *All expenses with sponsorship are deductible, falling within the law:*

»The income tax related to the financial year 2010 = 39875 - 3500 = 36375 lei

"Income tax due to the IV quarter/2010 = 36375-25980 = 10395 lei

- *In declaration 101, Section C will be enlisted all the incomes and expenditures for the year 2010: at line 2 it will be filled the minimum tax that the operator would have owed according to the tax scale, at line 5 it will be filled the tax income declared for the reporting year by the Form 100; resulting from the calculations, at line 2 it will be filled the annual income tax, and at line 2 it will be filled, the difference in tax due.*

Example 3:

From the statements of a company on September 30th 2010, we extract the following data:

- total revenue = 5487364.45 lei
- total expenses = 6148667.3 RON;

»Accounting result = 661302.85 lei (Loss accounts)

- Total non-deductible expenses for the period: 64828.84 lei

»Tax result = 661302.85 + 64828.84 (Tax loss) = 596,474.01 lei

- the amounting revenue *for 2009 is of 7726055.56 lei, so the company was within the grid according to a minimum tax amounting to 8250 lei:* minimum tax for the period January 1st to September 30th, 2010 = (11000:12) x 9 = 8250 lei
- *both for the first quarter of 2010, and for the second quarter of 2010, the company recorded the minimum tax because it had tax loss for each reporting period;*
- *on September 30th 2010, in the statement 101, Section C, line 2 it will be filled in the minimum tax, and to line 3 it will be filled in the due income tax, meaning the minimum tax, the same amount of 8250 lei, in line 39 there will befilled in the reportable tax loss, meaning an amount of 596474 lei;*
- *for the period October 1st to December 31st 2010 the company's situation is as it follows:*
- total revenue = 1797538.76 lei
- total expenses = 1620385.52 lei

»Accounting result = 177153.24 lei (Accounting profit)

- Total non-deductible expenses for the period: 18907.16 lei
- tax loss recorded and reported in the first period, amounting 596474.01 can be recovered during the period *October 1st to December 31st 2010*, considered to be a separate taxable period;

"The tax result before the loss carry forward = 177153.24 + 18907.16 = 196060.4 lei

- ***but it is a taxable income, but, taking into account that the tax loss previously recorded may be carried forward, the tax result becomes a tax loss:***

"The tax result after the loss carryforward = 196060.4 + 596474.01 = 400413.61 ROL

- *In the statement 101 there will be recorded the revenue and expenses for this period resulting a taxable profit before reporting the loss (line. 36) of*

196060 lei, affected with the reported loss recorded in line 37, will become a tax loss amounting 400413.61 lei which will be postponed for the next seven years.

5. Conclusions

The result of an economic activity is seen from two points of view: accounting result and tax result.

The consequences of obtaining one or another are different depending on the nature of the result. An accounting deficit is a counter performance that the company must correct as soon as possible, so as not to adversely affect the future work of the company, being staked even its existence. On the other hand, a fiscal deficit due to the carry-over possibility, may actually be an advantage to be used by the company, depending on the opportunities offered by the legislation.

For 2010, the legislative news incurred in connection with the calculation and statement of the tax income can cause problems if these are not correctly and completely understood, implemented.

2010 is divided into two tax years, and when calculating the profit tax there are taken into account the revenues and expenditures of each fiscal period, with specific limitations of each of them.

Also for 2010 there will be filed two annual tax statements for the tax income, modified in content to meet the information and legislative needs changes that have taken place.

Also, as a result of the new applied regulations in the taxation field, regarding the calculation and statement of the minimum tax profit there will take place the following effects:

- it will be reduced the tax loss recovery period of 5 and 7 years for companies that make two statements;
- the social spending limit, entertainment, sponsorship, will be calculated separately for each interval;
- it will affect the amount of the reinvested profit because for this year will be calculated depending on the investments and the tax due for each of the two tax years.

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