LEGISLATIVE, ACCOUNTING AND FISCAL NON-CONFORMITIES

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Abstract

In the context of the debate analysis from the last decades on the relationship between accounting and taxation, independence or dependence of the accounting rules from the tax ones and taking into consideration that the independence of the two leads to permanent and even significant differences between the accounting and tax profit, I found that certain terms are regulated differently in accounting legislation in our country compared to fiscal one or the legislation in the economic field. Taken from this perspective the main objective of this scientific approach is the identification of accounting and tax legislative nonconformities and the proposal of the ways to solve them so as to eliminate, where possible, differentiated professional interpretations.

Keywords: controversies, legal reserves, registered capital, tangible assets, fixed assets.

Classification JEL: M40, M41, M49.

1. INTRODUCTION

The debates of the last three decades on the relationship between accounting and taxation, addressed and examined in a wide variety of empirical or fundamental studies prove that the interest in this theme has remained unchanged over time, and the implications of taxation on accounting are obvious, especially if our country. We appreciate that when examining the relationship between accounting and taxation the research was and is focused not only on disconnection of accounting from taxation, which cannot be fully achieved, but also on the major influence that taxation exerts on accounting, influence that can create shortcomings, if we refer to the use of presenting different user accounting information. [2]

If we consider that after 1990, the accounting legislation was issued by the Ministry of Finance, we can deduce the influence that taxation has had on accounting, since the main user of the accounting information is the state. The complexity of the subject, although it seems unrealistic, can occur often and in the light of the insufficiency to explain the associated terminology [1] or of legislative inconsistencies, both of fiscal and accounting nature.

In this context, the main objective of this paper is to identify the nonconformities between accounting and tax laws in connection with the component elements of the equities, while proposing measures to solve them. [3]

2. LEGISLATIVE, ACCOUNTING AND TAX CONTROVERSIES

Taking into account the variety and creativity of the work of a professional accountant, based on the permanent knowledge exceeding the scope of the legislation in force on the accounting of entities, we can appreciate that accounting professionals have an important role in developing the economy and in defending the public and private interest.

But, in certain situations, by bushy legislation governing both the accounting and tax field, it is challenged the specialist accountant's professionalism who must cope with the existing nonconformities.

Looking from this perspective, we hereinafter intend to refer to some inconsistencies in the legislation field that make teaching accounting, taxation or the economy to be achieved under some differences of opinion, although elements of taxation are introduced in teaching accounting at university level, so that there is the possibility of providing superior training of accounting professionals.

Referring to the **legal reserves** as part of equities, as they were regulated by the law in force, they cannot be used to increase the registered capital [4, art. 210], aspect also strengthened by the accounting legislation stating in art. 419, par. (3): "Legal reserves can only be used under the conditions provided by law." [5]

However, in the tax laws [6] namely in the Methodological rules to apply the provisions art. 26, par. (1), lit. (a) it is stated: "If the legal reserve is used to cover the losses or distributed in any form to increase the registered capital, the reserve reconstituted after use, in the same limit, is deductible in the calculation of tax result", aspect which conflicts with the legislation on commercial societies. [4]

Remaining in the sphere of equities, specifically of the **registered capital**, in the Law no. 31/1990 [4, art. 10, par. (1)] it is stated the minimum value of the registered capital for joint stock companies or partnership limited by shares in foreign currency and lei, namely the equivalent in lei of the amount of 25,000 Euros set at 90,000 lei, stating that the Government may amend this value at most once every 2 years, depending on the exchange rate communicated

by the National Bank of Romania. [11] But the Government has never changed the value in lei, the exchange rate is the one in force in November 2006.

However, an entity may elect to choose for the application of corporation tax when establishing it [6, art. 48, par. (5)], if the subscribed capital is at least the equivalent in lei of the amount of 25,000 Euros on the date of its registration in the Trade Registry.

But the equivalent in lei is determined by the leu/Euro exchange rate communicated by the National Bank of Romania, valid for the date of registration of the legal person. As lei/Euro exchange rate increased, this means that to be within the category of legal persons paying corporate tax, an entity registered in the Trade Registry as a joint stock company, on the date of 31.10.2016, with a minimum registered capital, it will not benefit from this option because the exchange rate of the National Bank of Romania for that date is 3.5057 lei/Euro [11], resulting a minimum subscribed capital of 112,643 lei, with 22,643 lei over 90,000 lei, value prescribed by the laws in force when establishing joint stock companies. [4]

Likewise within the legislative, tax and accounting nonconformities, we believe that here also falls the manner in which are made the **defining and structuring of tangible assets, namely land and fixed assets**.

Thus, if in the contents of the accounting rules relating to the annual financial statements it is not made reference to the category of fixed assets, defining only the tangible assets as actives which: "are held by an entity for use in the production or supply of goods or services, for rental to third parties or for use in administrative purposes; and are used over a period longer than one year" [5, point 190, par. (1)], in the tax laws appeared after the regulations indicated before [6, art. 28, par. (2)] it is defined the depreciable fixed asset, which includes, in addition, the specification relating to the tax value that they must have when entering the heritage of the entity, namely: "equal to or greater than the limit established by Government Decision".

Only that, in par. (3), letter f) it shall be noted that the category of depreciable fixed assets includes, among others, the arrangements of land, provision that is inconsistent with the structure of tangible assets which contains, according to the legislation on accounting depreciation, [7] "fields, including investment for their arrangement and the fixed assets". The same approach by which land arrangements do not fall into the category of fixed assets, is found in the legislation related to the classification of fixed assets used in economy and establishment of normal functioning periods that correspond with the depreciation periods in years, periods in which it is recovered the input value of the fixed assets by way of depreciation. [8]

In addition, the legislation setting the minimum input value of the fixed assets, in force from July 1st, 2013, refers to the fixed assets not to the tangible assets or depreciable fixed assets. [9] The same amount of not less than 2,500 lei was also established to the public institutions, but the enforcement date was February 12th, 2014, the legislative act [10] referring to fixed assets.

Therefore, we consider that the three examples which we previously referred to are cases of legislative nonconformities, of fiscal and accounting nature, which often face professional accountants in performing their work duties, frequently putting to the test, their professionalism, which must face these legislative inconsistencies. If in the accounting practitioners level often these issues are overlooked, in the university level teaching accounting, taxation and economy may be made under the aegis of differences of views, due to teaching different subject matters or not knowing integrally the legislation which regulates a field or not seeing the differences in nuance.

3. CONCLUSIONS

Taking into account the bushy volume of the economic legislation in general and of the one regulating taxation and accounting particularly, after 1990 accounting professionals, many times, were placed in the position of applying an ambiguous legislation that treats differently similar issues. From this standpoint, we aimed to identify some of the existing disparities and provide regulatory solutions in this paper.

Thus, we consider necessary the amendment of the provisions of art. 210 from the Law 31/1990 for legal reserves on commercial companies and their correlation with tax law [6], in the sense of being the possibility to use the legal reserves, aspect that makes consistent the two above mentioned regulations with the accounting legislation. [5]

Referring to the registered capital, we propose the annual update its value in lei for the newly established companies, depending on lei/Euro exchange rate in force at the end of the previous financial year, without the obligation of the existing entities to modify the minimum amount of registered capital from the moment when they were recorded in the Trade Registry. We also believe that the same leu/Euro exchange rate should be taken into consideration in the case when a company was established during a financial year that has the possibility to choose the use of corporate tax, thus eliminating the inapplicability of the option for joint stock companies, which although have a minimum capital of 25,000 Euros, in lei provided by the commercial legislation [4] is different from the value in lei regulated by the tax legislation. [5]

In order to standardize the regulations in force on tangible assets and fixed assets, we consider necessary that the legislation referring to accounting regulations on the annual individual and annual consolidated financial statements [5] includes a third condition in point 190, par. (1), namely letter c) with the following content: "equal to or greater than the limit established by Government Decision" and also achieves a separation of tangible assets in lands and fixed assets, structuring legislated by the other normative acts to which we referred to above, except tax legislation [6], which

falls the land arrangements in the category of depreciable fixed assets (art. 28, par. (3), letter f)). Therefore, we believe that this inclusion must be removed.

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