

LEGAL, ACCOUNTING AND FISCAL ASPECTS CONCERNING SPONSORSHIP AND PATRONAGE

BENGESCU MARCELA

PhD. READER, UNIVERSITY OF PITESTI, ROMANIA

e-mail:m_bengescu@yahoo.com

Abstract

In this paper I presented the result of the specialised doctrine study, but also that of the study of the legislation that regulates sponsorship and patronage. The object of sponsorship and patronage is to freely grant financial means or material goods. Sponsorship is based on a written agreement, while patronage is based on an authenticated contract. Sponsorship beneficiaries can be natural persons and non-profit legal entities. Sponsorship and patronage agreements are concluded in compliance with Law no. 32/1994 on sponsorship.

Taxpayers who are sponsors or patrons are entitled to deduce, from their profit tax or from their microenterprise income tax, the sponsorship, patronage and private scholarship expenses, in compliance with the Fiscal Code and the Norms for the application of the Fiscal Code. Self-employed persons, taxed based on the self-employment tax rate, may deduce, in the calculation of their tax, 5% of the basis calculated according to the Fiscal Code. When the sponsorship consists of granting goods for which VAT has been deduced and the taxpayer registered for VAT purposes has deposited the annual sponsorship ceiling, VAT is collected for the amount that exceeds that ceiling. For the application of the rules detached from the tax legislation, I included in the paper case studies inspired from the activity of taxpayers in Romania.

Keywords: Sponsorship, patronage, agreement, profit tax, microenterprise income tax, income tax, VAT.

JEL Classification: M41, K34

1. Introduction

In the modern world, sponsorships are frequently met. Even for a beginner in the application of the financial knowledge, the notion of sponsorship leads us to think of a delivery and acceptance report free of charge. The sponsor is the person who delivers freely, and the person who receives is the beneficiary of the sponsorship.

We recommend to the administrative and management staff of the business entities to show interest in knowing the advantages of sponsorship actions, given the opportunity to make the sponsor's name popular and to deduce sponsorship expenses from the profit tax or from the microenterprise income tax, as the case may be.

Sponsorship and patronage seem to be easily mistaken, they are regulated by Law no. 32/1994 on sponsorship as updated and I will present herein a study on the interdependence between taxation and accounting of the expenses generated by sponsorship and patronage. [2].

2. Legal aspects

According to the legal provisions in force, sponsorship consists of the transfer of the ownership of material goods and financial means with the purpose of supporting non-profit activities, carried out by the beneficiary of the sponsorship. The parties agreeing on the sponsorship conclude a written agreement in which they stipulate the object, value, duration of the sponsorship, rights and obligations of the parties. [7]

In the case of patronage, the transfer is made towards a natural person, without counterparty obligations. Patronage is based on an authenticated contract.

Note: In the case of sponsorship, a written agreement is required, while in the case of patronage, a contract in an authenticated form is required.

The beneficiaries of sponsorship may be non-profit legal entities carrying out the activities provided by the law in Romania, public institutions and authorities, specialised bodies of the public administration, TV and radio shows, books and publications in the fields specified by the law.

The activities that may be sponsored are included in the following fields: cultural, artistic, educative, learning, scientific – fundamental and applied research, humanitarian, religious, philanthropic, sports, protection of human rights, medical and sanitary, social assistance and services, environmental protection, social and community, presentation of professional associations, and maintenance, restauration, conservation and valorising historical monuments.

In the case of patronage, the person who transfers goods or financial means is referred to as patron, and the beneficiary is a physical person who carries out an activity in one of the following fields: cultural, artistic, medical and sanitary or scientific – fundamental research.

Note: In the case of sponsorship, the beneficiary may be a natural person or a non-profit legal entity, while in the case of patronage, the beneficiary is a natural person. In both cases, the beneficiary must carry out the activities provided by the law.

3. Fiscal aspects

In the case of taxpayers who pay a profit tax, Art. 25 of the Fiscal Code includes sponsorship, patronage, and private scholarship expenses in the category of expenses that are not deductible from the profit or loss calculation. In the next stage, the profit tax is determined before the sponsorship expenses are deducted. Sponsorship, patronage and private scholarship expenses are deducted from the profit tax at the level of the minimum amount resulting from two calculations:

- a) 0.5% x turnover;
- b) 20% x profit tax due; [5]

Example: A taxpayer who pays profit tax achieved the following indicators in 2017: a) total income 10,500,000 lei, out of which the turnover is 10,450,000 lei; total expenses 8,500,000 lei, out of which the sponsorship expenses are 85.000 lei. The annual profit tax is calculated in the table below:

Table no. 1- Profit tax due by the sponsor [1].

It. no.	Indicator name	Amount -lei-
1.	Total incomes, from which:	10.500.000
	- Turnover	10.450.000
2.	Total expenses, out of which:	8.500.000
2a)	- Sponsorship expenses	85.000
3.	Tax result	2.085.000
4.	Tax rate	16%
5.	Profit tax before deducing the sponsorship, patronage or private scholarship expenses	33.600
5.	Sponsorship/patronage/private scholarship expenses within the limit provided by the law	52.250
6.	Annual tax, row 4)-row 5)	281.350
7.	Deferred sponsorship/patronage/private scholarship expenses row 2a)-row 5).	32.750

Note: In the table above I used the following correlations: a) Tax result=total income— Total expenses + sponsorship expenses; b) Calculations related to the sponsorship limit $0.5\% \times 10,450,000 = 52,250$ lei and $20\% \times 333,600 = 66,720$ lei. The lowest amount resulting from the two calculations is deducted from the tax due.

According to the Fiscal Code, the amounts that are not deducted from the profit tax are carried forward for the next 7 consecutive years. Their recovery is made in the order of their registration, in the same conditions, at each profit tax payment term.

In the case of taxpayers paying microenterprise income tax, art. 56 para. (1¹) of the Fiscal Code provides that the amounts spent for sponsorships with the purpose of supporting non-profit entities and religious establishments, who are accredited social service providers with at least one licensed social service, in compliance with the law, deduce the related amounts from the

microenterprise income tax up to a value level representing 20% of the microenterprise income tax due for the quarter in which the respective expenses were recorded.

Example: A microenterprise with 10 employees made in the first quarter of 2018 a 250,000 lei tax base, the legal tax rate is 1%. During this quarter, it had a sponsorship in the amount of 1,500 lei.

Table no. 2 - Microenterprise income tax due by the sponsor

It. no.	Indicator name	Amount -lei-
1.	Tax base	250.000
2.	Sponsorship expenses	1.500
3.	Microenterprise income tax 1% x row 1)	2.500
4.	Sponsorship up to the limit of 20% x tax	500
5	Tax due as at 31/03/2018 after deducing sponsorship expenses	2.000
6..	Deferred sponsorship expenses row 2)-row 4)	1.000

The amounts that are not deducted from the microenterprise income tax due shall be carried forward in the next quarters, for a period of 28 consecutive quarters. The deduction of these amounts from the microenterprise income tax due, in the next 28 consecutive quarters, shall be made in the order of their registration, in the same conditions, at each microenterprise income tax payment day. [5]

Under the legal provisions, microenterprises who grant sponsorships are required to draft and submit an informative statement in relation to the beneficiaries of the sponsorship.

In the case of the income tax due by self-employed persons, taxed based on the self-employment tax rate, the sponsorship, patronage or private scholarship expenses, incurred in compliance with the law, have limited deductibility at the level of 5% of the calculation base determined according to formula no. 1.

$BC = Vb - Cd + Cs + Cp$	<i>Formula {1}</i>
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In which: Vb=Gross income; Cd=deductible expenses; Cs= sponsorship, patronage or private scholarship expenses; Cp= entertainment and representation expenses. Source 3 Art. 68 para. 5) and 6) of the Fiscal Code

Vice versa: in the case of natural persons who are beneficiaries in sponsorship agreements, the amounts received are not deductible.

Example: A self-employed taxable person authorised to practice a liberal profession achieved the following indicators in 2017: gross income 221,000 lei, deductible expenses, other than sponsorship and entertainment and representation expenses 19,500 lei, sponsorship expenses 14,500 lei and entertainment and representation expenses 1,500 lei. The calculation of the deductible sponsorship expenses is presented below:

Table no. 3 – Deductible sponsorship expenses in the calculation of the income tax

It. no.	Indicator name	Amount -lei-
1.	Gross income	221.000
2.	Deductible expenses	19.500
3.	Sponsorship expenses	14.500
4.	Entertainment and representation expenses	1.500
5	Base on which the limit of tax deductibility of the sponsorship expenses is applied row 1)-row 2)	201.500
6.	Sponsorship expenses deductible in the calculation of the income tax row 5)x5%	10.075
7.	Non-deductible sponsorship expenses row 3)-row 6)	4,425

In the case of persons registered for VAT purposes, sponsorship and patronage related expenses that have as an object granting goods for which the VAT deduction right has been exercised, fall under the provisions of art. 270 para. (8) letter c) of the Fiscal Code. According to

these regulations, granting small-value items does not represent deliveries of free goods, in sponsorship, patronage, entertainment/representation actions, under the requirements laid down by the methodological norms for the application of the Fiscal Code. [6].

Moreover, the norms for the application of the Fiscal Code specify that the goods granted for free in sponsorship or patronage actions are not deemed to be deliveries of goods if the total value throughout one calendar year observes the limit of 3 per thousand of the turnover constituted from the expressly specified operations:

- Taxable, exempt or non-deductible operations;
- Operations for which the deliver/provision place is abroad, in compliance with the provisions of art. 275 and 278 of the Fiscal Code. [6].

We can thus see that the turnover, determined in order to assess sponsorships associated to deliveries, has a different structure compared to the turnover defined by accounting regulations. In order to support such statements, we will exemplify the taxable operations that do not generate incomes included in the turnover reported in the accounting records. These income result from the sale of the fixed assets shown in the credit of account 7583 Income from the selling of assets and other capital operations.

The compliance with the ceiling is calculated by summing up the data reported in the VAT returns submitted for the calendar year to which they refer. The calculation will not take into account the cash ceiling and the goods in relation to which the tax was not deducted. If this ceiling is exceeded, the operation is deemed to be a delivery of goods against payment for which VAT is collected which is reported in the statement drafted for the last tax period of the year.

4. The accounting treatment of the sponsorship and patronage expenses

According to the legal definition, the net turnover is represented by the amounts obtained from the sale of products and the provision of services after deducing commercial discounts and the value added tax and other direct taxes related to the turnover. [8]

By summing up all rollovers of the accounts in Group 70, we will obtain the turnover which is the base for the calculation of the sponsorship, patronage or private scholarship expenses which are deducted from the profit tax, in compliance with the provisions of art. 25 in the Fiscal Code.

By summing up all deliveries reported in the VAT returns, we will obtain the turnover that represents the indicator for the inclusion of the goods granted within the sponsorship action in the VAT regime, in compliance with art. 270 para. (8) in the Fiscal Code.

As a novelty, from 2018, in the Chart of Accounts, account 6584 " Expenses with amounts or goods granted as sponsorships" was included.

Due to the fact that the Law on sponsorship provides for granting financial means and material goods, we can conclude that intangible assets cannot be granted within such actions.

According to the provisions in art. 1 para. (5) of the Law no. 32/1994 on sponsorship, in the case of sponsorships or patronage consisting of material goods, the contract provides the real value of the delivered goods. We can exemplify, in this respect, partially amortized tangible assets. In such case, the real value is the non-amortized value.

For the material goods granted within sponsorship and patronage actions, a waybill is drafted mentioning "Do not invoice - goods are dispatched based on Sponsorship Agreement no. ...".[4]

For values exceeding the ceiling of 0.3% of the turnover, which from the VAT point of view is deemed to be an invoiced delivery, a self-billing invoice is drafted.

For the application of the accounting and fiscal rules, we will analyse the case of a microenterprise for which the estimated tax base in 2018 is 950,000 lei to which 1% is applied for the calculation of the microenterprise tax calculation. The tax base of 950,000 lei coincides with the deliveries that will be reported in the VAT returns for 2018, according to art. 270 para. (8) in the Fiscal Code. In 2018 based on a sponsorship agreement, it gave to a non-profit organization a computer with a value of 4,500 lei and an amortization of 200 lei. [3].

The tax on the microenterprise income is 9,500 lei;

The sponsorship that is deducted from the tax is $20\% \times 9,500 = 1,900$ lei.

The tax due is $9,500 - 1,900 = 7,600$ lei;

The sponsorship to be carried forward is $4,500 - 1,900 = 2,600$ lei;

The ceiling calculated for VAT, according to art. 270 (8) in the Fiscal Code: $950,000 \times 0.3\% = 2,850$ lei;

The sponsorship for which VAT is collected $4,500 - 2,850 = 1,650$ lei:

VAT collected corresponding to the exceedance of the ceiling $19\% \times 1,650 = 313.5$ lei.

Observation: It is deemed that when the Sponsor purchased the computer, it deducted VAT.

The succession of the accounting records is shown in table no. 4:

Table no. 4- Accounting record of the sponsorship expenses

It. No.	Explanations	Debt	=	Credit	Amount -lei-
1.	Sponsorship contract ad waybill, writing the computer off	%	=	2132	4,700
		2813			200
		6584			4,500
2.	Microenterprise income tax	698	=	4418	7,600
3.	Self-invoice for the collection of the VAT corresponding to the exceedance of the ceiling calculated according to Art. 270 para. (8) in the Fiscal Code	635	=	4427	313.50

Key: 2132 “Measurement, control and adjusting devices”; 2813 “Depreciation of plant and machinery, transport means” 6584 “Costs of amounts and goods granted as sponsorship”; 698 “Costs of income tax and other taxes not included in the items above” 4418 “Income tax”; 635 “Other taxes and similar liabilities”; 4427 “Collected VAT”.

6. Conclusions

In the business entity management activity, we believe that sponsorship, patronage and private scholarships should be a priority, because sponsors may decide on the purpose of part of the profit tax or microenterprise income tax. Consequently, sponsors can have a significant contribution to the promotion of the human and material values.

In the research activity, there should be a higher concern for the development of the educational process by establishing practice centres for pupils and students. The quality of the specialised practice is influenced by the endowment of the practice centre. Endowments can be made by sponsorships, while practitioners could be stimulated by private scholarships. We should focus on the identification of sponsors and capitalizing the resources obtained from sponsorship with the purpose of improving the quality of the didactic act.

In relation to the improvement of the sponsorship conditions, we express the following two opinions:

- Law no. 32/1994 on sponsorship should allow for the inclusion of software and other intangible assets into the category of goods that may be granted for free within sponsorship agreements;
- The fiscal provisions should be eliminated from the text of the Sponsorship Law, because some of them are not in line with the Fiscal Code.

We draw the attention on the fact that the written form of the sponsorship and patronage agreement is mandatory, the difference being that: in the case of the sponsorship, the contract is a private deed, while in the case of patronage, it is an authenticated document.

6 References

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