ASPECTS REGARDING THE TAXATION AS MICROENTERPRISE

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Abstract

In Romania, we have to admit that micro-enterprises taxation seems to be a problem always present. In this current article we intend to carry out an analysis of the effects that underlie the law that came into force on January 1, 2018, by which the profit tax was replaced by the turnover tax. Thus, companies with incomes between half a million and one million euros, which paid until December 31, 2017 a 16% profit tax, have been moved from 2018 to the taxation of micro-enterprises, where there is a tax rate of 1%, if there is at least an employee or a tax of 3% for those without employees. Questions are being asked: Are this measures going to collect more money to the budget? Are there going to be positive or negative effects on the business environment in Romania? To find the answer, more entities have been studied. The result was that the micro-enterprises with a higher turnover will pay a smaller tax whereas the micro-enterprises with a lower turnover will pay a higher tax. The study’s solutions were: the micro-enterprises with a lower turnover to reduce their expenses in order to deal with the tax, whereas the micro-enterprises with a higher turnover through diminished taxation have an increased availability for investments.

Cuvinte cheie: microenterprises, turnover, tax, system of taxation

Clasificare JEL : M40, M41

1. Introduction

As a result of the globalization phenomenon that has manifested since the end of the 20th century until now, there have been many changes in national, but also European laws regarding the tax system, but also the tax rates to which they are subjected categories of entities. When establishing an entity or when operating it, according to several criteria, the company may be in the following situations:

- company paying income tax on microenterprises
- company paying income tax on profits

Over time, several researchers have analyzed the implications of the tax system on the performance of SMEs, but also on the fiscal pressure to which Romanian companies are subject. A recent study shows that taxes and fees influence the size of profit or loss of small and medium-sized companies and create a negative impact on the financial balance, expressed mainly through the low level of solvency and liquidity. (Bucur et al., 2019). Their results are consistent with several previous studies in other countries. (Mendez-Picazo et al., 2012; Todorovic, I., 2013; Khidmat et al., 2014; Dobrotă et al., 2017).

Starting with 2018, major changes have been made in the Romanian legislation on the way of taxation, which, on the one hand, can benefit companies, but on the other hand, can affect, even significantly, both the financial position and the results of the financial year. The legislative changes brought to Law no. 227/2015 on the Fiscal Code, have been described by economists as a "fiscal revolution", which has a direct impact, both on the level of corporate profits and on the state budget (Ocnean, M & Marin, D., 2018). A recent study analyzes and compares a taxation model applied to the turnover compared to the classical one applied to the profit for the companies listed on the Romanian capital market in the period 2012-2016. The results show that the taxation of the turnover would simplify the taxation process of the companies (Huşman, A.I. & Brezeanu, P., 2018).

Another national study focuses on determining the impact of the turnover taxation on the profit taxation in the case of companies operating in the commercial field, concluding that this method would simplify the process of determining the size of the taxes, but whose applicability
could lead to violations of the Under European law, it could lead to an increase in the unemployment rate and that of migration, and on the other hand it could lead to a decrease in foreign investments (Stoicea, P; Dinu, TA; Stoian, E, 2019).

Microenterprises are also influenced by the factors influencing the return on sales level may be the economic environment, competition, the degree of risk of the sector of activity. The evolution of this rate is interdependent with three main factors: sales structure (market studies to assess demand trends in the next period), sales prices (coverage of costs, but also competition prices), production costs (the aim is to reduce them as much as possible without affecting the quality of the products sold or the services provided) (Buzgurescu, Preda O., 2018).

The present research focuses on the study of micro-enterprises with areas of activity such as: retail and / or wholesale, production, services, excluding situation of the hotels and restaurants that have the obligation to pay specific tax.

Both forms can bring both advantages for the society and disadvantages, the most important being that the entrepreneur together with the accountant to make an analysis of several elements, such as: the volume of the activity, the number of employees, the expected incomes, etc.

Next, I will highlight the main aspects regarding the tax side of the companies paying the income tax on microenterprises in 2019.

This year, from a fiscal point of view, for a company to be taxed on microenterprise income, there are some key rules that must be followed, rules that I will deal with in the following paragraphs.

The data analyzed in the present research were taken from the databases of the Ministry of Finance, consulting the legislation in force (Law 227/2015 on the Fiscal Code, Law 31/1990 on Commercial Companies, Accounting Law no. 82/1991). The companies included in the study were taken from the databases of the Chamber of Commerce and Industry, but also from the archives of the Trade Register.

The method used, mainly, to achieve the objective is represented by the interview, which was applied to managers and / or chief accountants, respectively economic directors of companies with various fields of activity operating in Alba county, Romania. Thus, centralized, the data regarding the interviews carried out are found in Table 1. The total number of respondent entities is 39, out of a total of 7 fields of activity.

Table no. 1 Respondents by activity areas

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Manufacturing industry</th>
<th>Wholesale</th>
<th>Industry metallurgical</th>
<th>Services and tourism</th>
<th>Other areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managers</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td>Economic directors</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Chief accountants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: own processing

2. Conditions of the companies

The Company must cumulatively meet the following three conditions, on December 31st of the previous fiscal year:
- there will be revenues that will not exceed the equivalent in lei of 1,000,000 euros. The exchange rate on the 31st December 2018 was 4.6639 lei / euro, so the limit is of 4,663,900 lei;
- the social capital of the company must be held by persons other than the state and the administrative-territorial units;
- the company must not be in dissolution, followed by liquidation, registered in the trade register or in the courts of law.

3. At the Foundation

The newly established companies are required to pay tax on micro enterprise earnings starting with the first fiscal year if the social capital condition is met at the time of registration in the trade register.

Exceptions: We also have an exception here, and that is: companies can only opt once to pay corporate income tax if they have subscribed a share capital of at least 45,000 lei and have at least 2 employees (full-time or part-time fractions that cumulative equate to the full norm), the option being final.

4. Taxation Rates

Companies paying a micro tax may have 2 tax rates depending on the number of employees:
- 1% for micro-enterprises with one or more employees;
- 3% for micro-enterprises without employees.

An employee means the person employed on a full-time or part-time individual labor contract. Fractions of the norm will accumulate from more employees so as to form the equivalent of an entire norm.

Thus, according to the Decision no. 354/2018 for amending and completing the Methodological Norms for the application of Law no. 227/2015 regarding the Fiscal Code, approved by the Government Decision no. 1/2016, the micro-entities that will be in the situation where employees whose individual contracts of employment are suspended will apply a 1% quota.

5. The Component of the Taxable Base

The Smart Bill blog states that in determining the tax base for corporate income tax, companies will consider income from any source, from which they will decrease the following elements:
- incomes related to the cost of product stocks;
- incomes related to the costs of services in progress;
- incomes from the production of tangible and intangible assets;
- incomes from subsidies;
- incomes from provisions, adjustments for impairment or loss of value, which were non-deductible expenses for the calculation of taxable profit or were established during the period when the Romanian legal person was subjected to the income tax on micro-enterprises;
- incomes from the restitution or cancellation of interest and / or late payment penalties, which were non-deductible expenses when calculating taxable profit;
- incomes earned from indemnities, from insurance / reinsurance companies, for damages to goods in the nature of inventories or tangible assets;
- incomes from exchange rate fluctuations;
- financial incomes related to debts and debts settled on a currency exchange rate resulting from their valuation or settlement;
- the value of the post-billing trade discounts registered in the "709" account, according to the applicable accounting regulations;
- incomes from payment titles obtained by the persons entitled, according to the law, initial holders registered with the Central Commission for Compensation or their heirs;
- damages received on the basis of rulings of the European Court of Human Rights;
- incomes obtained from a foreign state with which Romania has concluded a convention for avoidance of double taxation, if these were taxed in the foreign state.

On the other hand, at the taxable base, the company will have to add the following elements:
- the value of trade discounts received after invoicing, registered in account "609", according to applicable accounting regulations;
- in the fourth quarter or the last quarter of the taxable period, in the case of taxable persons who cease to exist, the favorable difference between the income from exchange rate differences / the financial income of the debts and debts with settlement of a foreign exchange rate resulting from the valuation or settlement and the expenses on foreign exchange differences / related financial charges, recorded cumulatively since the beginning of the year;
- the reserves, except for those that are tax deductions, reduced or canceled, representing the legal reserve, reserves of the revaluation of fixed assets, including land, which were deducted from the calculation of taxable profit and were not taxed during the period when the microenterprises were also paying profit tax, whether the reduction or cancellation is due to the change of the destination of the reserve, the distribution to the participants in any form, the liquidation, the division, the merger of the taxpayer or any other reason;
- reserves representing fiscal facilities set up during the period when microenterprises were also taxpayers, which are used to increase share capital, to distribute to participants in any form, to cover losses or for any other reason. If the tax reserves are maintained until liquidation, they are not taken into account in determining the taxable base due to liquidation.

6. Scale of the Cash Register from the Taxable Base

Where the cash registers have been purchased, the acquisition value of these is deducted from the taxable base, according to the supporting document, in the quarter in which they were put into operation.

In fact, in the quarter in which the cash register was put into operation, the taxable income recorded in the quarter for which it is calculated actually reduces the value of the cash register (VAT for non-payers) and the result obtained will apply the percentage of 1% or 3%, as the case may be.

The amount resulting from these calculations is the tax on micro income due for that quarter.

7. Declaration and payment of the tax

The income tax on micro enterprises shall be declared on a quarterly basis using form 100, which shall be submitted not later than the 25th of the following month for the quarter ending. One of the amendments to the Fiscal Code starting with 2018 is the extension of the tax regime for the income of microenterprises, meaning that any Romanian legal person who on 31 December 2017 achieved incomes that did not exceed the equivalent in lei of the amount of EUR 1 million, will be included in the micro-business category and will be subject to the specific tax regime from 1 January 2018.

With the entry into force of the new amendments, the conditions for opting for the application of the corporate tax rules will be abrogated if the legal person has a share capital of at least 10,000 euros. Also, the condition for limiting the income from consulting and management to no more than 20% of the total revenues will be abrogated for the micro enterprise.
Thus, companies with annual incomes of less than EUR 1 million, irrespective of the industry they are part of, will be able to apply tax on micro-enterprise income starting January 1, 2018, at a rate of 1% if the legal person has at least one employee, or 3% if he / she has no employees.

I think there is a generally positive impact for investors, with the indication that there are also some limiting aspects.

8. Who wins?

The new changes will bring an advantage to investors who hold business with annual profits of more than 6% over their total income.

According to an analysis, for example, a Romanian legal person fulfilling the conditions to be considered a micro-enterprise and having total revenues in the year 2018 of EUR 700,000 (below the maximum threshold of EUR 1 million) would apply the tax rate of 1% of the income obtained and expressly mentioned in the tax legislation (assuming that he has at least one employee), thus registering an effectively due tax of 7,000 euros. Compared to the corporate tax regime, to pay an equal tax, the same income should generate a taxable profit of up to 43,750 euros, taking into account the application of the 16% rate.

In conclusion, any company regardless of the sector in which it operates and generating profits higher than 6.25% of its earnings, the latter being below the threshold of EUR 1,000,000, will benefit from the changeover to the income tax regime microenterprises, in the sense of lowering the tax actually due.

9. Who loses?

Tax losses can no longer be recorded and carried forward when this tax regime is applied. This implication may have negative effects on real estate developers, for example, who are having tax losses during the development of real estate projects, as they will no longer be carried over until the project becomes operational and generates tax income.

Thus, real estate developers need to find solutions and modify their business model as a result of the failure to carry over and use tax losses during the project development period.

10. Dividend Payments

Regarding the impact of the tax regime on the income of microenterprises on the distribution of dividends, we note the following:

• Dividends paid by a micro-enterprise to a Romanian corporate taxpayer are considered non-taxable income;
• Taxable income at the level of a Romanian corporate taxpayer is deemed to be a dividend received from a non-resident corporate taxpayer in accordance with the law of the EU country of residence because such income does not fall under the exception of taxation provided for in Directive 2011/96 / EU and implemented in domestic law under Title II, on the basis that the non-resident paying entity is not a taxpayer.

It can be considered that Romanian legislation differentiates the fiscal treatment for the same type of income when it comes to two categories of payers - a resident and a non-resident - both non-taxable profits within the meaning of Directive 2011/96 / EU; which can be interpreted as discriminatory for Romanian holding companies.

Moreover, it should be borne in mind that dividend payments made by microenterprises to non-resident shareholders will be subject to withholding tax in Romania and taxed 5% according to
the Romanian rules, since in this case the exemption from tax cannot be applied as transposed by the European Directive in the matter, since the Romanian legal person paying dividends does not fall under the corporate tax rules.

The highest level to which a company may apply the income tax regime for microenterprises has been increased to one million euros since the beginning of 2018, so that firms with total income lower than the threshold mentioned at the end of 2017 were forced to pay, at least in the first quarter of this year, 1% or 3% income tax on microenterprises, depending on the existence (or not) of employees instead of 16% corporate tax. Beginning with the second quarter of 2018, microenterprises can once again opt to apply corporation tax under certain conditions. Each of the two systems of taxation has certain pluses and certain minuses, which I present in the following paragraphs.

From January 1, 2018, the threshold up to which a company can apply tax on micro enterprise income has doubled, from € 500,000 to € 1 million, total income. The measure was taken through the Government Emergency Ordinance no. 79/2017.

Thus, companies with incomes reaching the end of 2017 between half a million euros and one million euros paid in the first quarter of 2018 a tax on micro enterprise income, either 1%, if there were employees, or 3% if there was not even one employee.

Beginning with the second quarter of the year (April-June 2018), companies with a total income of less than one million euros may optionally opt to apply corporate taxation, as long as the following two conditions are met: holding a social capital of at least 45,000 lei (approx. 10,000 euros ) and the existence of at least two full-time employees.

The possibility to apply the corporate income tax in the case of companies having a share capital of at least 45,000 lei was reintroduced in the legislation from 1 April 2018, by Government Emergency Ordinance no. 25/2018, since such a variant had been abolished since the beginning of 2018.

According to the cited normative document, the calculation and payment of the profit tax by the microenterprises that opt for this tax regime will be made taking into account the incomes and expenses realized starting with the quarter of exercise of the option.

"By exception (...), microenterprises which have subscribed a share capital of at least 45,000 lei and have at least 2 employees may opt only once to apply the provisions of Title II (profit tax) starting with the quarter in which these conditions are fulfilled cumulatively, the option being definitive", is mentioned in the previous document, which refers to two full-time employees. However, the condition is also met for companies that:

• have people employed with an individual part-time labor contract, if the fractions of the norm provided in them, summed up, represent the equivalent of an entire norm;
• have concluded management or mandate contracts, according to the law, if their remuneration is at least equal to the minimum basic salary per country guaranteed in payment, respectively 2.230 lei from January 2020.

11. The 1% tax rate applies also to companies with employees with suspended contracts

As mentioned above, microenterprises with one or more employees pay a 1% tax on micro enterprise income, while those without employees pay a 3% tax.

From 2018, the 1% reduced tax rate also applies to companies that have employees whose individual employment contracts are suspended. The measure was introduced by the Government Decision no. 354/2018, a normative act that brought several amendments to the norms of the Fiscal Code.

In other words, an employee with the suspended individual work contract does not actually work for his employer, so it remains to be seen how the Executive measure will be interpreted by
employers. An example would be women who gave birth and who went into childcare leave, and they are still on the payroll of the firm or with zero salary and a suspended contract.

Interestingly enough, since 2018, they can apply the income tax on microenterprises the companies that receive income from consultancy or management, even if the share of incomes from these activities passes 20%, as long as they fall within the one million dollar amount (Stoicu et al., 2019). In addition, companies operating in the banking, insurance and reinsurance, capital markets or gambling sectors now enter into the field of corporate income tax, as long as they do not have a higher turnover at the end of 2017 of one million euros, in which case they are required to apply the profit tax regime.

12. Conclusions

In this article, I have been trying to answer, as a result of a study carried out at 39 economic entities, what are the advantages and disadvantages of taxing the income of microenterprises, and the conclusions were as follows:

- The benefits of taxing microenterprises income.

Regarding the advantages of this type of tax regime, I will first of all recall that microenterprises can make deductions from the tax due to the state. Specifically, they can deduct sponsorships they make to NGOs or churches, up to 20% of the quarterly income tax. Thus, Form 100 - Statement of Payment Obligations to the State Budget - now has, in Section I, a row regarding the amounts that can be deducted from the micro tax, that is sponsorships.

In the absence of deductible expenses, determining the tax outcome is made easier, so we are talking about a lower volume of work for accountants. In addition, there are situations where certain companies can pay a tax on microenterprise income lower than the corporate tax they owed previously, for companies with a minimum profit margin. So if you have a big profit on your turnover, it's more advantageous to pay turnover tax than profit tax.

- Disadvantages of taxing microenterprises income:

First of all, there is the possibility for some firms to pay a higher state tax, depending on the effective tax rate that would have been due if they were not obliged to change the tax regime applied. The same above calculation applies and it is available for companies that have a low profit margin.

Incidentally, the ability of companies to opt for corporate profits, to the detriment of micro-taxation, may be attractive for companies that are in the investment and loss-making stage or for those with a profit margin of less than about 6% reported to turnover. In this case, the 1% tax applied to income (applicable if the company is a microenterprise and has at least one employee) would be higher than 16% of the profit, and such a business would be interested in opting for the tax on profits.

Also on the list of disadvantages is the impossibility to deduct certain expenses or to recover some tax losses from the past years, as well as to increase the scope of the taxed income. For example, tax losses can no longer be recovered in certain situations, such as when too much time goes by until the company returns to profit tax.

13. Acknowledgement

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14. References


[16] https://www.smartbill.ro