

FISCAL AND ACCOUNTING ASPECTS REGARDING THE PROFIT TAX

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Abstract

The profit tax, in Romania, is determined by applying the rate of 16% to the taxable profit. It is determined by deducting, from gross profit, non-taxable income and tax deductions, and adding non-deductible expenses from a tax point of view. For activities such as night bars, nightclubs, discos or casinos, the profit tax due may not be less than 5% of the income generated. The profit tax is determined and is due annually or quarterly, cumulated from the beginning of the year. Profit invested in technological equipment, electronic computers and peripherals, machines and household appliances, control and billing, in computer programs is exempt from tax. Those assets must be kept in the patrimony for at least half the duration of the economic use, but not more than 5 years. The limitation period for determining the profit tax is 5 years from 1 July of the year following that for which the tax is determined. Profit tax accounting is performed using account 4411 "Profit tax". The correct declaration and full payment of corporate income tax determines fair competition for taxpayers.

Keywords: *profit tax, accounting and fiscal aspects, tax deductions, income tax on micro-enterprises*

Classification JEL: *M41, H30*

1. Introduction

Romanian legal entities have the legal obligation [3] to pay profit tax that is calculated on the profit obtained in Romania and abroad. Foreigners, who obtain income on the Romanian territory through a stable headquarters, also owe profit tax. They do not owe and do not pay profit tax: State Treasury; The National Bank of Romania; public institutions, with the exception of their economic activities; The Romanian Academy and its foundations; religious institutions; The bank deposit guarantee fund, the investor compensation fund, the private pension guarantee fund and the insured guarantee fund, as well as other organizations provided by the Fiscal Code.

2. Calculation and declaration of income tax

Accounting profit is determined as the difference between the revenue and expenditure recorded in the accounts [6]. In order to obtain the tax result, the non-taxable income and the tax deductions are deducted from the accounting profit, and the non-deductible expenses from the fiscal point of view are added. When determining the tax result, elements similar to income and expenses, as well as tax losses, are also taken into account.

The tax loss is declared by form 101, "Declaration on income tax", and is determined extra-accounting by deducting from the accounting loss of non-taxable income and adding non-deductible expenses from a tax point of view. The current accounting loss is reflected in the debit balance of account 121 "Profit or loss", and the loss from previous years in the debit balance of account 1171 "Deferred income representing undistributed profit or uncovered loss".

According to the legal provisions [3], the annual tax loss, declared to the tax authorities, is recovered from the taxable profits obtained in the next 7 consecutive years. The recovery of losses is made in the order of their registration, at each term of payment of the profit tax. The positive fiscal result represents the taxable profit, and the negative fiscal result represents the fiscal loss.

The tax rate that applies to taxable profit is 16%. For taxpayers who carry out activities such as night bars, nightclubs, discos or casinos, the profit tax due may not be less than 5% of the income generated. If the profit tax due (calculated at 16%) is less than 5%, the taxpayer is required to pay a 5% tax applied on income. To this end, the respective taxpayers are obliged to organize and keep the accounting records in order to know the revenues and expenses related to these activities.

The profit tax due is calculated as follows:

Profit tax = $16/100 * (\text{Total income} - \text{Total expenses} - \text{Income non-taxable} - \text{Tax deductions} + \text{Non-deductible expenses})$

The main non-taxable incomes are [3]:

- dividends received from a Romanian legal entity;
- dividends received from a foreign legal entity if the participation, for a uninterrupted period of one year, is at least 10% of the share capital, on the date when the Romanian legal entity receives the dividends;
- income from the cancellation of expenses for which no deduction was granted;
- revenues representing increases in value resulting from the revaluation of assets fixed, land, intangible assets;
- non-taxable income, expressly provided for in approved agreements and memoranda through normative acts.

Expenditures incurred for the purpose of carrying out economic activity are expenses deductible in determining taxable profit.

The following expenses are tax deductible, limited:

- protocol expenses up to a rate of 2% applied to the accounting profit at plus corporate tax and protocol expenses;
- social expenses, within a quota of up to 5% applied on the value staff salary expenses; • expenses representing meal vouchers and holiday vouchers;
- depreciation, perishability, losses resulting from handling / storage;
- depreciation;
- interest expenses and other costs equivalent to interest economic;
- 50% of the expenses related to the motorized road vehicles that are not used exclusively for the purpose of economic activity, according to the legal provisions [5].

Non-deductible expenses when calculating taxable profit are:

- the taxpayer's own expenses with the profit tax due;
- interest / surcharges, fines, confiscations and penalties for late payment due to the Romanian or foreign authorities;
- expenses regarding goods of the nature of stocks or depreciable fixed assets found unmanaged or degraded and not attributable, including the related value added tax;
- expenses related to non-taxable income;
- the expenses registered in the accounting records, which are based on a document issued by a taxpayer declared inactive;
- sponsorship or patronage expenses, expenses regarding private scholarships. These amounts are deducted from the profit tax due under the law [5].

The income tax is determined, declared and paid, with the legal exceptions [3], quarterly, until the 25th of the first month following the end of quarters I - III. For this, form 100 "Declaration on obligations to the state budget" [6] is submitted. The finalization and payment of the profit tax related to the fiscal year is made until March 25 of the following year, when the form 101 "Declaration regarding the profit tax" is submitted.

The quarterly income tax due is determined by the difference between the profit tax, cumulated from the beginning of the year to the end of that quarter, and the cumulative profit tax from the beginning of the year to the end of the previous quarter.

Profit invested in technological equipment, electronic computers and peripherals, machines

and household appliances, control and billing, in computer programs is exempt from tax [3]. The income tax exemption is granted within the limit of the profit tax calculated from the beginning of the year until the quarter of the commissioning of the assets, respectively within the limit of the cumulative profit tax calculated from the beginning of the year of the commissioning of the assets until the end of that year. taxpayers who apply the annual corporate tax return and payment system.

Taxpayers who benefit from the income tax exemption have the obligation to keep in the patrimony the respective assets for at least a period equal to half of the economic use duration, but not more than 5 years. Otherwise, the profit tax due is recalculated and, in addition, tax accessories are levied.

The competent tax authority may establish additional profit tax within 5 years starting with the first date of the month following the month in which 6 months have elapsed from the end of the fiscal year for which the tax obligation is due [2].

3. Income tax on micro-enterprises

Micro-enterprises do not owe income tax. According to the legal provisions [3], a micro-enterprise is a Romanian legal entity that cumulatively meets the following conditions, on December 31 of the previous fiscal year:

- realized incomes that did not exceed the equivalent in lei of 1,000,000 euros. The course of exchange rate for determining the euro equivalent is the one valid at the end of the year in which the limit was exceeded. Thus, in 2021, the economic agents who, in 2020, realized incomes below 4,869,400 lei are the payers of the income tax of the micro-enterprises;
- the share capital is owned by persons other than the state and the administrative units territorial;
- not in dissolution, followed by liquidation, registered in its trade register in the courts, according to the law.

Legal entities that fulfill the above conditions and that carry out as main or secondary activity the activities corresponding to the CANE codes for which they should owe specific tax [4], owe tax on the income of micro-enterprises.

The income tax rates of micro-enterprises are:

- 1% for micro-enterprises that have one or more employees;
- 3% for micro-enterprises that do not have employees.

The income tax of micro-enterprises is set, declared and paid quarterly, until and including the 25th of the month following the quarter for which the tax is calculated.

If a micro-enterprise generates revenues higher than 1,000,000 euros, it owes profit tax starting with the quarter in which this limit was exceeded. The exchange rate used to determine revenue, in euro, shall be that at the end of the previous financial year.

Account 4418 "Income tax" is used for the registration in accounting of the income tax of micro-enterprises, as follows:

698	=	4418	
"Income Tax Expenses		"Income Tax"	Tax due
and with other taxes that do not occur			
in the above items "			
4418	=	5121	Tax paid
"Income Tax"		"Bank accounts in lei"	

4. Profit tax accounting

The accounting of debts and receivables regarding the profit tax is organized with the help of account 441 "Profit tax and other taxes", respectively of the synthetic account of degree II 4411 "Profit tax".

The credit of these accounts [1] provides information on the tax due by the taxpayer, by correspondence with the debit of account 691 "Income tax expenses" and information relating to the profit tax related to previous years, in case of correction of accounting errors, through the debit account 117 "Retained earnings".

The debit reflects information regarding the amounts that are settled to the state budget on

account of this fiscal obligation, by correspondence with the credit of account 5121 "Accounts at banks in lei" as well as the amounts prescribed, exempted or canceled from the profit tax, through the corresponding creditor account 758 "Other operating income".

Recognition in accounting of income tax due and paid [7] to a company for the first and second quarters of 2021:

- the profit tax due for the first quarter of 2021 is reflected, in the amount of 40,000 lei:
691 "Income tax expenses" = 4411 "Income tax" 40,000 lei
- the profit tax due for the first quarter of 2021 is paid:
4411 "Profit tax" = 5121 "Bank accounts in lei" 40,000 lei
- cumulatively (quarter I, quarter II) the profit tax due is 30,000 lei. Thus reduces the obligation related to the first semester of 2021 with the amount of 10,000 lei, the entity having on 25.07.2021 profit tax paid in addition in the amount of 10,000 lei:
691 "Income tax expenses" = 4411 "Income tax" -10,000 lei

5. Case studies

They are economic agents, who owe profit tax, and who try to reduce the tax payable. The control bodies within the fiscal inspection activity, found, as a result of the verifications performed, various violations of the legal provisions [3], and as a result established additional income tax and related accessories, respectively interest, delay penalties and penalties. non-declaration. The main findings that determined additional amounts attracted to the state budget are:

- non-acceptance of the deduction of expenses related to the purchase of services or products, in which case the taxpayer could not prove their performance for the purpose of carrying out the economic activity;
- the taxpayers erroneously considered as deductible, the expenses regarding the goods of the nature of stocks ascertain lack of management, non-imputable, registered in the verified period;
- non-full registration of the realized incomes;
- non-declaration in full to the fiscal body of the calculated profit tax;
- non-recording of reserves from revaluation of assets and non-recording of income from revaluation reserves when revaluing revalued assets;
- non-declaration by declaration form D101 "Income tax return" of non-tax deductible expenses representing the expenses registered as a result of the assignment of some shares, below their nominal value;
- non-admission to the deduction of expenses with compensations, fines and penalties, amounts that were considered deductible by the verified taxpayer when calculating the taxable profit;
- rejection for deduction of the amounts entered in account 666 „ Interest expenses and exchange rate differences " representing interest on loans in lei, obtained from affiliated entities, the interest rate being well above the Robor average, being considered non-tax deductible the interest expense that exceeded the Robor level;
- influencing the taxable profit with the differences resulting from the sum of the adjustments of income and / or expenses, for transactions between affiliates, based on the transfer pricing file prepared;
- non-admission to deduction of operating expenses regarding provisions;
- adjustment of expenses with depreciation of fixed assets or incorrect calculation of these with reflection in the tax deductible expenses;
- recording expenses for which no documents could be submitted supporting documents.

For example, we present the following case studies:

a. S.C. „ X ” S.A. registered in accounting, in 2020, the amount of 1,803,482 lei, as being a fully deductible legal reserve when calculating the profit tax. Considering the accounting profit in the amount of 2,643,481 lei and the value of the subscribed and paid-in share capital of 800,000 lei, the economic agent considered deductible, from a fiscal point of view, the amount of 1,803,482 lei, exceeding by the amount of 1,643,482 lei , the value of the legal reserve, deductible according to

the legal provisions [3]: „the legal reserve is deductible within a quota of 5% applied on the accounting profit, to which are added the expenses with the profit tax, until it reaches the fifth part of the subscribed and paid-in share capital or from the patrimony, as the case may be”.

The additional profit tax due is 262,957 lei and the accessories were calculated from 25.01.2021 to 15.11.2021, as follows:

- interest: 294 days x 0.02% x 262,957 lei = 15,462 lei;
- penalties for delay: 294 days x 0.01% x 262,957 lei = 7,731 lei;
- non-declaration penalties: 294 days x 0.08% x 262,957 lei = 61,040 lei.

The accounting records are as follows:

➤ for the additional profit tax			
691	=	4411	262.957 lei
"Income tax expenses"		"Income tax"	
➤ for interest, delay penalties and non-declaration penalties			
6581	=	4481	86.233 lei
"Compensation, fines and penalties"		"Other debts to the state budget"	
➤ payment of established budgetary obligations			
%	=	5121	349,190 lei
4411 "Profit tax"		"Bank accounts in lei"	262,957 lei
4481 "Other debts to the state budget"			86,233 lei

b. S.C. „ Y ” S.R.L. erroneously considered the expenses to be tax deductible regarding the goods of the nature of stocks found lacking in management, not imputable. As it results from the Explanatory Note, requested to the administrator of the company, following the inventories carried out at the end of each year, from the verified period, non-attributable deficiencies in raw materials management for the period 2016-2019 were found, totaling 2,105,035 lei. The amount of management losses was recorded by the taxpayer in December of each year for the audited period, as an expense, which is considered deductible for the calculation of income tax. Thus, the legal provisions [3] were violated, which specify as non-tax deductible expenses, expenses regarding goods such as inventories or tangible assets found to be lost in management or degraded, not attributable, as well as the related value added tax, if it is due. according to the provisions of title VII ". These expenses may be deductible for the goods in the event that insurance contracts have been concluded.

It follows, therefore, that the value of the expenses regarding the raw materials found to be missing from management, not imputable, in the amount of 2,105,035 lei, were erroneously considered by the taxpayer as deductible in the calculation of the taxable profit. The profit tax, additional, is of 336,806 lei and the accessories in the amount of 389,084 lei, of which:

- interest = 70,742 lei
- penalties for delay = 35,371 lei
- non-declaration penalties = 282,970 lei

c. S.C. "Z" S.A., from Romania, recorded, as deductible expenses, the amount of 26,792,890 lei, related to procurement of services provided by an affiliated company "A" Ltd., from Germany, but for which S.C. "Z" did not prove their performance in order to carry out economic activity.

Thus, according to the invoice issued by the company "A" Ltd., to S.C. "Z", was invoiced the equivalent value of some storage services related to 2019, amounting to 5,609,667 euros, respectively 26,792,890 lei, an amount that was considered by S.C. "Z", deductible expense when calculating the profit tax for 2019.

Following the analysis of the information and documents submitted by S.C. "Z", the following aspects resulted:

- the contract presented was concluded between S.C. "Z" and the company "A" Ltd. in the month October 2020, following the period in which the respective services were provided (2019);
- according to the mentions in the invoice and the contractual provisions, the amount invoiced by the company from Germany to S.C. "Z" from Romania, represents the value of storage,

handling, delivery services to the company's customers in Germany, services having as object "flour" received from S.C. "Z";

- for all deliveries of flour destined for storage in Germany, in 2019, have invoices were issued by S.C. "Z" to the company "A" Ltd. from Hungary. Moreover, in the Explanatory Note, the administrator of S.C. "Z" mentions that the goods did not remain the property of S.C. "Z" Romania, the property right being transferred to the company "A" Ltd. before they are deposited.

Thus, given that the amount invoiced by the company "A" Ltd., represents the value of related services for goods that were no longer owned by S.C. "Z" in Romania, at the time of performance and in addition, at the date of provision of these services there is no contract between the two companies, which regulates the specific conditions, can not be demonstrated the need to provide these services in order to carry out economic activity to SC „ Z ” S.R.L. from Romania.

The additional profit tax is in the amount of 4,286,862 lei.

The interests and penalties were established for the period 25.01.2020 - 15.11.2020, resulting in the following:

- interest = 565,866 lei
- penalties for delay = 282,933 lei
- non-declaration penalties = 2,263,463 lei

6. Conclusions

The profit tax is an important source for the state budget and implicitly for investments at national level.

The correct declaration and payment of the profit tax, by all taxpayers, is a condition for the existence of fair competition between taxpayers, respectively the reduction of tax evasion.

They are also exempted from possible contraventional or criminal sanctions, in relation to the tax authorities as well as from the establishment of additional amounts that also attract interest, delay penalties and non-declaration penalties, amounts that increase expenses and decrease the profit of economic agents.

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