



## FISCAL IMPACT OF THE CONTROL REPORT RESULTS ON THE COMPANY

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**Abstract** *The fiscal obligation that falls on the taxpayers represents tax account receivables, resulted in the legal act that characterizes the tax liability and individualizes the monetary obligation of each income taxpayer. According to legal regulations we consider the following documents as being tax account receivables: declaratory act of the taxpayer consisting in statements that are submitted to the tax authorities, according to the law; tax return precept issued by the control bodies; protocol on control and differences left to pay, including increases due late-payment penalties; the customs declaration; the payment document or the document appended with fiscal stamps; the prosecutor or court disposal, etc. Starting from a real situation, we present in extenso, the practical findings of an accounting survey on corporate tax calculated at a company's level and the amounts ascertained by the inspection authority.*

**Key words:**

Tax claims, contribution, corporate tax, tax rating, differences left to pay, late-payment penalties

**JEL Codes:**

### 1. Introduction

Taxes in Romania are regulated by the Tax Code and are materialized in the following categories: tax on profits; income tax; microenterprise income tax; tax on the income obtained in Romania by residents; tax on agencies; value added tax; excise tax; local taxes.

Taxes are built on the following principles:

1. the principle of fiscal measures neutrality, based on different categories of investors and assets and on the form of ownership, which ensures equal conditions for all investors holding Romanian capital, but also for those holding foreign capital;

2. the imposition's reliability principle, helps developing precise juridical norms, that do not lead to arbitrary interpretations. It is the legal framework within which the technical elements of taxes and duties are established, materializing in: type of taxes, terms, manner of the payment, the amount to be paid, the calculation basis and the tax rates, which should be established in such a way as to be fair and accurate for each taxpayer separately. Based on these elements the fiscal debt of individual and business taxpayers will be configured, respectively, the fiscal burden which rests on each of them. These tax receivables, thereof their amounts, result in the influence of the financial management decisions on their tax burden;

3. the tax equity principle that influences individuals and materializes by imposing the income differently, depending on their size;

4. the taxation efficiency principle, which is looking to assure the long-term stability of the Tax code, in such a way as to avoid any retroactive effects, which have adverse effects on taxpayers, individuals and legal entities, related to the taxation regulations in force under major investment decisions. Literature offers several definitions regarding tax on profits, respectively, it is defined as "an indicator that expresses a company's financial performance and it is calculated as the difference between the income and expenses of the financial year"<sup>1</sup>, or "the difference between revenue and expenses"<sup>2</sup>; or "the remaining balance, after extracting certain expenses of certain income"<sup>3</sup>.

From a fiscal perspective, the result represents the taxable profit or the fiscal loss. The result represents for the state, the source of the

<sup>1</sup>Crețoiu Gh., Bucur I. (2004), *Contabilitate - Fundamentele și noul cadru juridic (Accounting – Fundamentals and the new legal background)*, All Beck Publishing House, p.219

<sup>2</sup>Pântea I.P., Bodea Gh. (2009), *Contabilitatea financiară românească (Romanian financial accounting)*, Intelcredo Publishing House, p.409

<sup>3</sup>Dănescu, T., (2000). *Conturile anuale (The annual accounts)*, Dacia Publishing House, p.149

taxes payable owed by individual and business taxpayers, which is based on the principles underlying their allocation.

The task of company's management includes the responsibility for implementing and maintaining an integrated management system that targets the achievement of specific objectives: use of material resources, financial resources, human resources, quality, environment, health, occupational safety, marketing, cost management. "Moreover, a strong employer brand lowers costs, including company's recruitment costs, because, due to their loyalty, the organization does not have to replace existing employees with new ones, retention costs being lower than recruitment and induction ones"<sup>4</sup>.

## 2. Case study on the determination of the taxable basis for determining the tax on profits

The research followed the correct determination of the taxable basis for determining the tax on profits and the additional tax established for the SC QACADEMICA LLC Company.

In determining the taxable basis of the tax on profit, for the year 2013, we considered:

- the legislation regarding the tax of profits, applicable for the analysed timeframe;
- the data contained in the tax declarations, published by SC QACADEMICA LLC with the tax authority within its range;
- the calculation and booking of the depreciation of structural funds investments and other fixed assets billed by SC QACADEMICA LLC;
- aspects regarding the calculation's precision, the society's compliance with the present legal framework;
- generating documents regarding the extra income tax, established for this period by the fiscal authority, after a tax inspection, in the sense of the correct and legal amount owed by the company.

Documents and evidence which we refer to are the following:

- General fiscal inspection report, concluded on the 1<sup>st</sup> of December 2009 with no. ABSCD12345 prepared by the fiscal authority;

- The taxation decision, on additional tax liabilities to be paid, established by the fiscal inspection no. EFG dated 1<sup>st</sup> of December 2009, prepared by the fiscal authority;

The legal framework which we refer to, is materialized in:

- Law no.133/20.07.1999 on stimulating private enterprisers for setting up and developing small and medium enterprises;
- GEO no. 297/30.12.2000 amending the Law no. 133/1999;
- Law no. 414/26.06.2002 regarding tax on profit;
- GEO no. 70/28.08.1997 on fiscal control, modified and completed;

In this respect, the following appendices have been prepared:

- Appendix no. 1 called "situation regarding the determination of the taxable basis and the calculation of the payable tax on profits, determined by the tax authority, declared by the claimer and the one established by the chartered accountant for 2013."

The acknowledgements are based on the information derived from the accounting records, the control certificate and the accounting expertise.

The analysis of documents and evidence shows different results, for which we proceeded to comparatively analyse the tax on profit established by the fiscal authority, the tax established by the company and the one imposed by the chartered accountant, as resulting from the table 1.

Based on this table, obtained from the data shown in the accounting of the company SC QACADEMICA LLC, the data in the inspection report and the ones resulting from the situation's expertise, we ascertain the following:

- In 2013, SC QACADEMICA LLC, submitted the profit tax statement. According to their records, the company had a profit.
- In the situation presented above, the tax authority as well as the accounting expert did not take into account the fiscal loss from previous years, loss registered as a result of applying Measure no. 1 in the Certificate no. ABCDE, previously filled.
- Analysing the table, it results that, the tax authority has not considered as being deductible the additional depreciation expenses in the amount of 311128 lei. In 2005, SC QACADEMICA LLC does not register because of a material error, the additional depreciation expenses in the amount of 311.128 lei,

<sup>4</sup>Luca, F.AI., Ioan C.AM. Sasu, C., *Implementation and Development of the "Employer Branding Management" Concept on the Romanian Labor Market in the Current Economic and Social Context*, Annals of Ovidius University of Constanta, Economic Sciences Series, vol XIII, Issue 1, 2013.

representing the depreciation calculated for a fixed number of 20 assets, for which new

operating lives were established, according to another Certificate dated 01.12.2013.

Table 1.

| SIATUATION OF THE FINANCIAL INDICATORS 31.12.2013 |   |            |  |  |  |
|---|---|------------|--|--|--|
| Running Number                                    | INDICATORS FOR THE TAX ON PROFIT CALCULATION BASIS    |            | Sums established by the fiscal authorities | Sums established in the financial statements | Sums established in the accounting expertise |
| 0   | 1   | 2          | 3  | 4  | 5  |
| 1   | Total income  | +          | 41.760.324                                 | 41.760.324                                   | 41.760.324                                   |
| 2   | Difference on the account 711- Variation in inventory | -          | 327.662                                    | 0  | 327.662                                      |
| 3   | Total income resulted in the control                  | =          | 42.087.986                                 | 41.760.324                                   | 42.087.986                                   |
| 4   | Total expenses  | -          | 36.275.463                                 | 36.366.745                                   | 36.275.463                                   |
| 5   | Earnings  |            |  |  |  |
|   | Profit (+)  |            | 5.812.523                                  | 5.393.579                                    | 5.812.523                                    |
|   | Loss (-)  |            |  |  |  |
| 5   | Depreciation not included in expenses                 | -          |  |  | 311.128                                      |
| 6   | Gross earnings  |            |  |  |  |
|   | Profit (+)  | =          | 5.812.523                                  | 5.393.579                                    | 5.501.395                                    |
|   | Loss (-)  |            |  |  |  |
| 7   | Non-deductible expenses                               | +          | 266.160                                    | 254.511                                      | 266.160                                      |
|   | Tax on profits  | +          | 91.282                                     | 91.282                                       | 91.282                                       |
|   | Fines and penalties                                   | +          | 62.627                                     | 62.627                                       | 62.627                                       |
|   | Sponsorship   | +          | 100.602                                    | 100.602                                      | 100.602                                      |
|   | Commodate   | +          | 11.649                                     | 0  | 11.649                                       |
| 8   | Tax result  | =          |  |  |  |
|   | Profit (+)  |            | 6.078.683                                  | 5.648.090                                    | 5.767.555                                    |
|   | Loss (-)  |            |  |  |  |
| 9   | REFIGURED TAXBLE PROFIT                               | =          | 6.078.683                                  | 5.648.090                                    | 5.767.555                                    |
| 10  | Tax losses in the previous years – total              | -          | 0  | 4.828.136                                    | 0  |
| 11  | REFIGURED TAXABLE PROFIT                              | =          | 6.078.683                                  | 819.954                                      | 5.767.555                                    |
| 12  | Tax on the refigured profits                          | -          | 972.589                                    | 131.193                                      | 922.809                                      |
| 13  | Tax credit/sponsorships                               | -          | 94.626                                     | 40.172                                       | 94.626                                       |
| 14  | Tax on the due profit                                 | =          | 877.963                                    | 91.021                                       | 828.183                                      |
| 15  | Profit tax paid by the company                        | -          | 91.282                                     | 91.282                                       | 91.282                                       |
| 16  | Extra profit tax paid in the previous year            | -          | 0  | 0  | 0  |
| 17  | Extra profit tax to be paid                           | =          | 786.681                                    | -261   | 736.901                                      |
|   | To be paid  | +          | 786.681                                    | -261   | 736.901                                      |
|   | To recover  | -          |  |  |  |
| Tax credit calculation/sponsorships:              |   |            |  |  |  |
|   | Turnover*0,3%   | 31.541.874 | 94.626                                     | 94.626                                       | 94.626                                       |
|   | 20% of the profit tax                                 |            | 194.518                                    | 26.239                                       | 184.562                                      |

- From the table analysis it results that the tax authority has not considered expenses
- We show that according to art. 63 of the Tax procedure code with respect to "the probative force of the justificatory documents and accounting records"<sup>5</sup>the conclusions are as follows: "The supporting documents and the accounting records of the taxpayer constitutes evidence in determining the taxable basis. If there is other evidence, they will be taken into account in determining the taxable basis." This

situation is about a previous control certificate. It said in the response to the appeal, that the tax inspection authority was not presented with the supporting documents that attest that the extra depreciation expense must also be included. However claiming that the authority had no knowledge of the Report dated 01.12.2013, regarding the establishing of a new damping time is also discarded by the fact that the accounting affidavit no. 1111/31.12.2005, registers the depreciation difference for 2005 and partly for 2006. We show that the depreciation recorded in the accounts of SC

<sup>5</sup>Art. 63 in Tax Procedure Code

QACADEMICA LLC, for the 20 assets specified in the report, was 125091 lei in 2013, and by recalculating depreciation periods, the depreciation calculated for the same year, was in sum of 436219 lei, according to the accounting documents. The accounting affidavit no. 1111/31.12.2005 was drawn up during inspection.

- In determining the tax liability for SC QACADEMICA LLC, the fiscal inspection was bound, according to art. 7 paragraph 2 of the Tax procedure code approved by Government Ordinance no. 92/2003, "to examine the facts, to obtain and use all necessary information and documentation in order to determine correctly the taxpayer's situation"<sup>6</sup> the documents we refer to in paragraph (iv), "and other sustaining documents "that must be taken into account in determining the taxable basis.

6. In 2013, the accounting expertise establishes profit tax in the amount of 82883 lei, which was paid by the claimer in value of 91282 lei. The expertise of the fiscal authorities however, resulted in a profit tax of 736.901 lei.

7. After having analysed the documents with the purpose of determining the taxable basis for establishing the 2013 profit tax, taking into account the tax legislation applicable in the analysed period, we assert the following:

The fiscal authority did not consider the additional depreciation expense in the amount of 311.128 lei as being deductible expenses. SC QACADEMICA SRL does not register additional depreciation expenses in 2013 due to an error. These expenses are in value of 311.128 lei, representing the depreciation for a total of 20 assets, for which new operating lives were established, according to the Record dated 01.12.2013.

We show that according to art. 63 of the Tax Code referring to "the documents and accounting records force of evidence" asserts as follows: "The supporting documents and accounting records of the taxpayer constitute evidence in determining the taxable basis. If there is other evidence, they will also be taken into account in determining the taxable basis" (sbl. ns.). Based on the SC QACADEMICA SRL Report dated 01.12.2013, establishing the new depreciation duration and the accounting affidavit no. 1111/31.12.2005, the difference in depreciation is registered in 2013. These documents constitute "other evidence" and they "will be taken into account in determining the taxable basis."

<sup>6</sup>Art. 7 paragraph 2 in Tax Procedure Code

### 3. Conclusions

1. In 2005, the accounting expertise establishes a 828.183 lei profit tax, 91.282 lei of which was paid by the company, resulting in an additional tax in an amount of 736.901 lei.

2. The tax inspection carried out by the control authority raises the taxable income by the amount of 2491150 lei, representing the claim of SC QACADEMICA LLC Ona Company called SC QACADEMICA 10 LLC. This amount is reflected in the account balance of 401 suppliers and it goes back to 2004 and 2005. The reason for this raise in the taxable income was that, SC QACADEMICA 10 LLC, at the time of the second fiscal control, was dissolved and radiated from the Trade Registry Office records.

3. Because, according to art. 236 of Law no. 31/1990, republished, it is shown that the "dissolution of a limited liability company with a sole owner, draws the universal transmission of the company to the sole shareholder, without liquidation". The text however does not say that the debt of a company to a dissolved supplier has the effect of increasing the revenues of the indebted company. Also, the debt to SC QACADEMICA 10 LLC, is within the limitation period and it can therefore be considered a certain and contingent debt, which in the present situation is due to the sole owner.

4. Consequently, the increase of the taxable income by the amount of 2491150 lei, representing the debt of SC QACADEMICA 10 LLC to SC QACADEMICA LLC established by the fiscal inspection has no legal background.

5. Taking into account these considerations, on 30.03.2013, the chartered accountant establishes a fiscal loss of 1.059.813 lei.

6. SC QACADEMICA 10 SRL does not owe profit tax, but it paid 32.571 lei by way of profit tax, representing the extra paid amount.

Between the income of a company and the costs incurred to achieve them, there is a causal relationship, namely an expense must be related to an income. As a result, the revenue-generating factor materializes in expenses. "In determining the taxable profits, only expenses incurred for the purpose of making taxable income, including those regularized by the laws in force, are considered deductible expenses"<sup>7</sup>. In determining the fiscal outcome, costs incurred by a company must be kept within the limits allowed by the laws that are characteristic to the entity's activity; must be performed in order to achieve taxable income; must

<sup>7</sup>Art. 21 from law no. 571/2003 on the Tax Code, amended and supplemented - the synthesis of the characteristics associated with deductible and non-deductible expenditure, Official Gazette 927/2003

be fiscally recognized. This results into the need for harmonizing the accounting entries with the tax requirements, namely to follow the tax conditions and requirements, the fiscal principles and tax fairness regarding deductibility or non-deductibility of expenses, when determining the fiscal outcome.

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