

Comparative Analysis of Taxation of the Income obtained by Micro-enterprises in Romania

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ABSTRACT

In Romania, starting with January 1st, 2016, the fiscal legislation has been substantially amended, subsequent to the publication of the new Codes: Fiscal Code and Fiscal Procedure Code. From this perspective, this paper refers at the fiscal treatment that must be applied by all the companies from Romania that must pay this type of tax. As a general rule, the companies from Romania must pay the tax on income of the micro-enterprise, if they earn taxable incomes below the threshold of 100,000 Euro and do not earn their majority income from consulting and management activities, or do not perform certain activities related to the banking, insurance domain etc. From among all the amendments brought by the new fiscal legislation, we highlight the introduction of different quotas of taxation of incomes, of 1% or 2% or 3%, depending on the number of employees, and also on the modification of the taxation bases from a double perspective, respectively the increase of the threshold from 65,000 Euro to 100,000 Euro and the introduction of a few incomes in the calculation basis.

Introduction

The tax on income of micro-enterprises was introduced in Romania in 2004, with the Law 571/2003 regarding the Fiscal Code, which has been amended and nuanced in the recent years. For example, until February 1st, 2013, this tax was optional, the companies having the possibility to choose between being a payer of the tax on profit or a payer of the tax on income of micro-enterprises. Besides, one of the essential conditions of income taxation was that the Romanian legal entity should have between 1 and 9 employees, hired with labour agreement. The European Union statistics "follow the development of tax revenues in Member States not only by origin and nature - direct and indirect -, but also by the default character of taxation" [Gherghina, Crețan, 2013]. After February 1st, 2013, it was introduced the obligation of income taxation, inclusively the decrease of the threshold of taxable incomes, from 100,000 Euro to 65,000 Euro.

We shall present below the main fiscal aspects valid since January 1st, 2016, comparatively to the previous legislation.

Approaches Related to Fiscal Treatment

The tax on income of micro-enterprises is regulated by the Title III of the Law 227/2015 regarding the Fiscal Code.

Defining the Concept of Micro-enterprise

The micro-enterprise is a Romanian legal person that cumulatively satisfies the following conditions on December 31st of the preceding fiscal year:

- earned incomes, other than those obtained from activities in the banking domain, in insurance and reinsurance, on the capital market, except for the legal entities that perform mediation activities in these domains, in the gambling domain, in the domain of exploration, exploitation, development of oil ores and natural gas. In the purpose of this article, we shall call the excepted incomes as incomes that do not fall under the incidence of the TIM;
- earned incomes that have not exceeded the equivalent in RON of 100,000 Euro;
- its share capital is owned by persons, other than the State or territorial-administrative units;
- is not in dissolution, followed by liquidation, is registered in the Trade Register Office or at Courts, in according to the law.

In which Cases is it Compulsory to Declare and Pay the Tax on Incomes of Micro-enterprises?

If the conditions resulted from the definition of the micro-enterprise are cumulatively satisfied, the tax on income of micro-enterprises is obligatory, as follows:

- the Romanian legal person ALREADY INCORPORATED, which was a TIM-payer in the previous year, will continue to apply this system in the current year, if on December 31st of the previous year it cumulatively satisfied the fiscal conditions imposed to micro-enterprises. Obviously, this must verify periodically if it satisfies or not the conditions of keeping to pay the TIM during the entire current year;
- the Romanian legal person ALREADY INCORPORATED, which was a tax on profit-payer during the previous year must pay the tax on incomes of micro-enterprises beginning with the current fiscal year, if, at the end of the previous year, it cumulatively satisfied the fiscal conditions of micro-enterprise. In this case, it will submit the Form 010 "Fiscal Registration Declaration / Deed of Undertaking for Legal Persons, Associations and Other Entities without Legal Personality" until March 31st, inclusively, of the year following the year when the conditions are satisfied (March 31st of the year during which the TIM is paid). For example, if a tax on profit-payer (with integrally private shareholders) earned incomes from trade in equivalent of 110,000 Euro in the year "N", it will still owe tax on profit in the year "N+1", because it exceeded the threshold of 100,000 Euro;

As it is already known, the recovery of the fiscal loss recorded by the tax on profit-payers is made with the Form 101 and the recovery period is of 7 consecutive years, as per art. 31 par. (1) of the Fiscal Code. IT IS FORBIDDEN to recover the fiscal loss during the period when you are TIM-payer. Still, if the entity becomes tax on profit-payer, it has the right to recover the fiscal loss in the following 7 consecutive years, within the limits and in the conditions expressly foreseen under art. 31 par. (4) of the Fiscal Code.

A Romanian legal person which is NEWLY INCORPORATED must pay tax on the incomes of micro-enterprises beginning with the first fiscal year, if the condition regarding its share capital is satisfied on the date of its registration in the Trade Register. In this situation, the micro-enterprise communicates (Form 010) to the competent fiscal bodies the application of the TIM system in 30 DAYS since its incorporation.

By exception from the fiscal rule, a Romanian legal person which is newly incorporated may choose to be a tax on profit-payer even since the date of its registration in the Trade Register, if it has subscribed a share capital representing at least the equivalent in RON of the amount of 25,000 Euro.

Determining the Calculation Basis of the Tax on Incomes of Micro-enterprises

The mathematical relation is described below, as follows:

? Incomes earned from any source
(+) Elements foreseen under art. 53 par. (2) of the Fiscal Code
(-) Incomes from art. 53 par. (1) of the Fiscal Code
(-) The purchase value of the electronic cash register, in the conditions foreseen under art. 53 par. (3) of the Fiscal Code.
= TIM Taxable Basis

Specifications

1) As regards the incomes obtained from foreign exchange /value differences

During the year (quarters I, II, III and IV), the incomes obtained from foreign exchange / value differences ARE NOT taxed, as per art. 53 par. (1) lett. h) of the Fiscal Code. Still, at the end of the year, only favourable difference between incomes and expenses from the exchange rate or value difference registered cumulatively since the beginning of the year until the end of the year will be taxed, as per art. 53 par. (2) lett. b) of the Fiscal Code.

2) As regards the taxation of certain reserves

The taxation basis is increased with the taxation of certain reserves (legal, from reassessment, from fiscal facilities): (i) reduced or cancelled, which were deducted upon the calculation of the taxable profit; and (ii) were not taxed during the period when the micro-enterprises were not tax on profit-payers.

3) As regards the incomes from subventions

In fact, "investment subventions" are included in the category "other incomes from exploitation" [Gherghina, Duca, 2012]. All the incomes from subventions, no matter their nature, are deducted from the taxable basis (subventions for fixed assets - admitted as incomes, along with their depreciation or subventions for expenses).

4) As regards further trade discounts

Only trade discounts (not the financial ones) offered after invoicing and registered in the account 709 "Trade discounts offered" are deducted from total incomes. Still, the taxable basis is increased with the trade discounts received after invoicing and registered into the rectifying account 609 "Trade discounts received".

Defining the Concept of Taxation Quota

Taxation quota - represent an "element used to calculate the tax" [Gherghina, Cretan, 2012]. The taxation quotas differ depending on the status of the micro-enterprise and on the number of existent employees, thus:

- 1%, for micro-enterprises with more than 2 employees, inclusively;
- 2%, for micro-enterprises with one employee;
- 3%, for micro-enterprises with no employee.

The actual fiscal legislation regulates the situations of amending the taxation quota if, during the fiscal year, the number of employees change, the new quota (higher or lower than the initial quota) being applied beginning with the quarter when the modification was made.

Another novelty is the introduction of the taxation quota of 1% in case of micro-enterprises NEWLY INCORPORATED, for the first 24 months, if certain cumulative conditions are satisfied, as regards:

- minimum number of employees (at least one employee hired in the first 60 days since the incorporation date. Be advised: the employee must have an individual labour agreement with full-time employment, inclusively employment resulted from cumulating part-time jobs/ agency agreements based on minimum gross wage paid at national level);
- minimum functioning length of the newly incorporated entity (at least 48 months);
- status of the shareholders /associates of the micro-enterprise (all the owners of the newly incorporated micro-enterprise are shareholders or associates for the first time).

Determination of the Payment Term of the TIM

The calculation and payment of the tax is made on a quarterly basis, until the 25th, inclusively, of the month following the quarter for which the tax is calculated.

Determination of the Deadline for Submitting the Declaration of TIM

As a general rule, the micro-enterprises shall submit the Form 100, on a quarterly basis, until the 25th, inclusively, of the month following the quarter for which the tax is calculated.

There are two exceptions for the situation when the company is dissolved during the year: (i) one for the companies that are dissolved without liquidation, situation when the company has to declare and pay the tax until the end of the taxable period, (ii) another, for the companies that are dissolved with liquidation, during the same year, situation when the afferent tax has to be declared and paid until the date of submitting the fiscal statements with the competent fiscal body.

Situations of Leaving the TIM System

When the Romanian legal person ceases to satisfy cumulatively the conditions foreseen in the definition of the fiscal law, it leaves the system of taxation on incomes of micro-enterprises, because: (i) the income threshold of 100,000 Euro is exceeded; (ii) the percentage of 20%, inclusively, of the incomes earned from consultancy /management activities in total incomes is exceeded; (iii) the micro-enterprise begins earning incomes from activities that do not fall under the incidence of this tax (for example, banking activities, gambling, exploitation of oil ores etc.); (iv) the State and/or administrative-territorial units own participations at the share capital of the micro-enterprise; (v) the micro-enterprise is in dissolution, followed by liquidation.

The micro-enterprises must periodically verify the incomes in RON cumulatively recorded since the beginning of the current fiscal year. For example, if the taxable incomes exceed the equivalent of 100,000 Euro, the micro-enterprise must fill in the deed of undertaking (Form 010) and submit it to the central fiscal body, in 15 days since the date of exceeding that threshold.

Concretely, we assume that in the 1st quarter "N", a trader earns taxable incomes in equivalent of 30,000 Euro, at the exchange rate valid on December 31st "N-1". On June 12th "N", the total of the taxable incomes recorded cumulatively since January 1st "N" until June 12th "N", is of 105,000 Euro. In this case, in the 1st quarter, it declares with the Form 100, the tax on incomes of micro-enterprises. Until June 27th "N", the taxpayer will submit the deed of undertaking (Form 010) filled in as follows: (i) leaving the system of taxation of incomes starting with March 31st "N"; (ii) recording as tax on profit-payer starting with April 1st "N". This micro-enterprise will owe tax on profit beginning with the quarter when it exceeds the threshold, therefore beginning with April 1st "N".

The calculation and payment of the tax on profit are made considering the incomes and expenditure recorded beginning with the 2nd quarter "N". Therefore, the taxpayer will declare tax on profit with the Form 100 for the 2nd quarter "N".

In our opinion, if the micro-enterprise becomes tax on profit-payer between April 1st and December 31st, it will declare, pay and bear distinctly, in the respective year, two different taxes: (i) tax on income; and (ii) tax on profit, starting with the quarter when it exceeds the limits imposed by the law. Therefore, changing the fiscal principle will also attract changes in the structure and content of the Form 101 (Annual declaration of the tax on profit), as follows:

- the filling-in period is between the first of the first month of the quarter when the taxpayers exceed the legal thresholds (above 100,000 Euro or above 20% in consultancy) or begin performing the activities foreseen under art. 48 par. (6) of the Fiscal Code;
- the annual tax on profit must be calculated considering only the incomes and expenses recorded in the quarter when the company becomes tax on profit-payer, until the end of that fiscal year;
- the tax on income due and declared during the year, in the Form 100, must no longer be decreased from the tax on profit (as the latter is not calculated at the level of the entire fiscal year).

The quality of tax on profit-payer is not definitive. Year after year, the company must verify if it fulfils cumulatively all the conditions for being a micro-enterprise. In the above-presented case, the entity will continue being a tax on profit-payer in the year "N + 1". At the end of the year "N+1", it will check if it satisfies these cumulative conditions and, if the case may be, if it passes to the payment of the tax on incomes of micro-enterprises.

Let us assume that at the end of the year "N+1", the company earned incomes of more than 500,000 Euro (at the exchange rate of the National Bank of Romania, valid on December 31st "N+1"). That is why it remains tax on profit-payer in the year "N+2". At the end of the year "N+3", the company obtains total incomes in equivalent of 40,000 Euro, reason for which it will apply the rules of taxation on the incomes of micro-enterprises, beginning with January 1st "N+4" considering the provisions of art. 48 par. (2) of the Fiscal Code. The means of communicating the obligatory application of the TIM is Form 010, which must be submitted until March 31st, "N+4". On that date, the company will declare: (i) resuming the system of tax on profit starting with December 31st "N+3"; (ii) entrance in the system beginning with April 1st, "N+4".

The same fiscal treatment is valid for the situation when, during a fiscal year, the micro-enterprise exceeds 20% inclusively of the incomes earned from consultancy and management activities, in total incomes.

As regards the other two situations of changing the fiscal vector, respectively when the micro-enterprise begins earning incomes from activities that do not fall under the incidence of this tax or when the micro-enterprise ceases to fulfil the condition regarding dissolution, it will communicate to the competent fiscal bodies the leaving of the system of taxation on incomes of micro-enterprises until March 31st, inclusively, of the following year (Form 010).

Conclusions

The comparative analysis allows us to notice that there have been substantial changes in the fiscal registration obligations, the size of the taxation basis, and the taxation quotas.

Thus, the maximum threshold of the taxable incomes has been increased from 65,000 Euro to 100,000 Euro, at the exchange rate of the National Bank of Romania, valid at the end of the previous fiscal year. Besides, the entities that perform activities of exploration, development, exploitation of oil ores and natural gas, may not be micro-enterprises.

Any payer of tax on profit/tax on income must annually analyse the conditions required to micro-enterprises and decide which taxation system applies in the following year. In comparison to the former fiscal legislation, there are no amendments regarding the fact that

the taxation in income is compulsory. As regarding the entrance in system, the registration as taxpayer was changed, from January 31st to March 31st inclusively, of the year when tax is paid. The taxpayer must submit Form 010 in order to be registered as TIM-payer and to be deregistered as tax on profit-payer. For example, in the year "N", a company was tax on profit-payer. Because it satisfies all the legal conditions and considering that its total incomes in the year "N" were below 100,000 Euro, it must become a payer of the tax on incomes of micro-enterprises beginning with January 1st "N+1" and must submit Form 010 until March 31st "N+1".

Another novelty refers at the fiscal communication deadline for the newly incorporated entities to enter the system - the law requires for the legal entities, associations and other entities without legal personality to send the fiscal registration declaration (Form 010) in 30 days since their incorporation.

As regards the taxation basis, certain reserves must be taxed (legal, from reassessment, from fiscal facilities), reduced or cancelled or which (i) were deducted at the calculation of the taxable profit and (ii) were not taxed during the period when the micro-enterprises were not tax on profit-payers.

A novelty is that the actual fiscal regulation requires the decrease of the taxation basis with the incomes earned from a foreign country Romania concluded the convention for the avoidance of the double taxation with, if these were taxed in the respective foreign country. In this manner, double taxation of those incomes is avoided (both in the source country and in Romania, as residence country, no matter the method foreseen in the convention for the avoidance of the double taxation (fiscal credit method or exemption method).

Instead of a unique quota of 3% applied to taxable incomes, differentiated taxation quotas were introduced beginning with January 1st, 2016, respectively 1% or 2% or 3%, depending on the number of employees and on the possibility of applying a unique quota of 1% for the newly incorporated micro-enterprises for a 48 month-period since their incorporation, in compliance with certain cumulative conditions.

If they fail to satisfy one of the cumulative conditions, the micro-enterprises must apply the tax on profit-system beginning with the following year or even during the current fiscal year. A substantial amendment aims at unitary application of the fiscal principle of declaring and payment of the tax on profit, respectively that tax on profit is owed beginning with that very quarter, considering the incomes earned and expenses borne in that quarter - and not since the beginning of the fiscal year, as used to be done in the past - if, during that respective quarter: (i) the threshold of 100,000 Euro is exceeded; or (ii) the percentage of incomes earned from consultancy and management activities in total incomes is above 20% inclusively; or (iii) incomes that do not fall under the incidence of the tax on incomes of micro-enterprises are earned.

The obligation of resuming the income taxation in the following year whenever the Romanian legal person, payer of the tax on profit, fulfils the cumulative conditions to be considered a micro-enterprise has been maintained.

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