BOOK-KEEPING AND DIVIDENDS TAX FISCALITY

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ABSTRACT: *Dividends represent a distribution in cash or in kind, made by a legal person to a participating in legal person as a result of ownership equity in that person. The incidence of taxation on dividend policy involves targeting the optimal dividend policy, subject to ongoing changes and effect of customer ownership. Generally, into the current tax system, dividends are taxed more heavily than capital gains from the rising value of the shares. Dividends are distributed to shareholders in proportion to participation in paid up share capital, if the constitutive act don't provides otherwise. Distribution of dividends will not be able to made then from profits arising under the law.*

KEY WORDS: *taxation laws; dividends; shareholders; principles; interest; penalties*

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Taxation laws, also called the fiscal law system by doctrine is designed and supported by the European public finances to be useful to distinguish and emphasize, in all regulations legal, financial, the legal rules on government revenue category that is made primarily with specific tax. According to the requirements for implementing the budget revenues, the legal regulation of taxes claimed two categories of legal rules (Ciumag & Ciumag, 2009):

1. Rules on the subject and issues of receivable taxes debt, taxes and other revenues;
2. Rules on tax procedure and collection of taxes and the settlement of disputes between taxpayers and state governments;

The first of these categories of legal rules generally tax has a substantive content, as appropriate to legally establish each of the taxes, etc stating the object and subject of the taxable or chargeable, the charge calculation, time and any other terms of payment thereof.

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The second of these categories include procedural tax rules, according to need fixing and collection of taxes and their abolition in cases challenging the way in which they were established.

Joined them, the tax law is filled with laws governing penalties taxpayers do not declare the correct taxes, or committing other violations of tax and other legislation on the enforcement of unpaid taxes in full and legal deadlines.

Establishing the tax on dividends is based on the following principles (Capron, 1994):

- neutral fiscal measures against different categories of investors and capital, the ownership, ensuring a level playing field to investors, Romanian and foreign capital;
- certainty imposed by the development of clear legal rules, which do not lead to arbitrary interpretations and terms, payment methods and amounts to be precisely determined for each payer, that they can follow and understand the burden that lies and to determine the sphere of influence their management decisions on their tax burden;
- tax equity in the individuals with different income taxation, depending on their size;
- efficiency of taxation by imposing long-term stability of the Fiscal Code, so that these provisions do not cause adverse retroactive effect to legal and natural persons in relation to taxation in force on their adoption of major investment decisions.

Dividends represent a distribution in cash or in kind made by a person participating in a legal person as a result of ownership of equity in that person (Măndoiu, 2007), excluding:

- a distribution of additional equity ownership does not change the percentage of holdings of any participant in the legal person;
- a distribution made in connection with the purchase / redemption of participation units own legal entity that does not change for participants in the legal person holding the percentage of units;
- a distribution in cash or in kind, made in connection with the liquidation of a legal person;
- a distribution in cash or in kind, made on reducing capital actually built by the participants;
- a distribution of share premium in proportion to its share of each participant.

Dividend is considered in terms of tax and is subject to the same tax regime as dividend income:

- the amount paid by a legal person for goods or services purchased from a participating to legal entity higher than the market price of such goods and / or services, if that amount has not been receiving tax imposed on income or profits;
- the amount paid by a legal person for goods or services for a participant in the legal person, if payment is made by the legal person for personal benefit.

The distribution of dividends collection appears as a (paying) entity denying some of its internal funding sources. Distribution of dividends are more or less important, the policy of self financing, namely the investment policy and capital accumulation.

Dividend distribution also provides an income to members (shareholders) who have completed their financial investment (Măndoiu, 2007). It can be seen in this way the opposition is manifested first as a business entity and autonomous decision centre and the other associations whose interest can't be measured only in terms of financial investment. Sometimes, such opposition appears to be reduced to the extent that capital accumulation is the source of earnings-term capital gains. There may be temptation to question the choice between a range of income and capital gain. It should not be forgotten that, if the company is engaged in process of development, it will use widely in debt.

There is a not a form of financing available for such use, but must be recognized that the distribution of dividends lead to an increase in borrowing if we are eager to maintain the same level of development. It can be argued that the company borrows to pay dividends, but this attitude is not rational, whereas debt burden is increasing in terms of tax deductible- the interest.

The incidence of taxation on dividend policy involves targeting the optimal dividend policy, subject to ongoing changes and effect of customer ownership. Generally, into the current tax system, dividends are taxed more heavily than capital gains from the rising value of the shares.

In these circumstances, entities are tempted to practice zero dividends. Available cash surplus should be used rather that the redemption by his own actions, if necessary. The announcement of the entity to drive an increase in dividends conducts, if the dividend tax is raised, to lower rate securities corresponding present value over tax cost. Shareholders will prefer capital gains rather than dividend capital.

These correlations should be considered by business/plants managers when deciding on the distribution policy in order to identify the optimal policy. Each entity, through its distribution policy, will build the own shareholders. By establishing long term the use and distribution of net profits and therefore dividends the companies should avoid even the changes of ownership, which would be generating unnecessary costs of trading.

The current rules on dividends set the obligation of calculation, withholding and payment of dividend tax by legal entities with their payment to shareholders or partners. If such dividend is to evaluate the product selling price of products from own production unit or the purchase price for others, if services are using these services charges.

Dividends are distributed to shareholders in proportion to participation in paid up share capital if the constitutive act provides otherwise. They are paid within the deadline set by the General Assembly or, where appropriate, established by special laws, but not later than six months from date of approval of annual accounts for the financial year ended, otherwise company would pay damages for the period of delay, the legal interest, whether by association or by decision of general meeting of shareholders approved the accounts for the financial year ended not more interest has been established.

Distribution of dividends will not be able to made then from profits arising under the law. Dividends paid contrary to law shall be refunded if the company proves that the associations knew the irregular distribution or in the existing circumstances, they should know.

Tax payable on dividends owe by legal persons for dividend received is determined by applying a tax rate of 10% on gross dividends. According to the law on domestic companies, domestic companies and companies owned or majority by the state, are allocated at least 50% of net income intended as dividends.

Income as dividends, including amounts received as a result of equity ownership to trusts funds is required at a rate of 16% of their amount. The obligation of calculating and withholding income tax in the form of dividends is legal persons, with the payment of dividends to shareholders or partners. Deadline for payment of the tax is until 25th day of the month following the payment is made. If distributed, but have not been paid shareholders or by the end of the financial statements were approved annual tax on dividends paid until January 25 the following year.

On dividends due to shareholders or individuals apply from 1 January 2007, a rate of 16%, regardless of share held by each shareholder capital.

Amounts received each year, net profit as dividends, by the shareholders or associates, in accounting are designed with 457 account "Dividends payable" with liability accounting function.

This account recorded in credit the gross dividends payable to partners or shareholders of profits in previous years, through account debt 117 "Retained earnings". The rate reflects, on the one hand, dividend tax of 16%, in the credit of account 446 "Other taxes and similar" and on the other hand the dividends are paid net of the law in correspondence with the cash credit account, those who temporarily leave the entity, in the credit account 455 "Amounts owed to shareholders, and dividends due but prescribed by law, in the credit account 758" Other operating income.

Account balance is credit and are considered dividends owed to shareholders or members.

Examples (Ciumag & Ciumag, 2009):

- It records shareholders dividends payable in the amount of 5.000 lei, 800 lei for withholding tax (5%) and paying in cash the net amount of 4200 lei granted

117 “Retained earnings”	=	457 “Dividends payable”	5.000 lei
457 “Dividends payable”	=	%	5.000 lei
		446 “Other taxes and similar liabilities”	800 lei
		5311 “Petty cash in lei”	4.200 lei

- It records dividends temporarily left by members to the unit, the amount of 4000 lei

457	=	4511	4.000 lei
"Dividends payable"		"Shareholders / associates current accounts"	

- It record dividends received on equity by the entity, and their subsequent collection, amounting to 7.000 lei.

4511	=	761	7.000 lei
"Shareholders / associates current accounts"		"Financial incomes"	

and after

5121	=	4511	7.000 lei
"Cash banks in lei"		"Shareholders / associates current accounts"	

Compulsory of calculate, and payment of withholding tax on dividends is to legal persons, with the payment of dividends to shareholders or partners.

In the case of distributed dividends, but were not paid to shareholders or members, as appropriate, by the end of the balance sheet was approved, the deadline for payment of tax on dividends is 31 December of that year.

Payment tax on dividends is made in lei. Entities that pay dividends is made in foreign currency, tax, interest and fines covered, it turns lei currency coming from foreign exchange rate on the date of payment

For late payment of tax on dividends is due to the interest, amounting to 0,05%, calculated for each day of delay from the day immediately following the period of maturity and fighting until the amount due. Such interest is established and aims reparatory damage character caused by delaying the execution state duty payment.

Also, due to late payment, calculated as a percentage of principal amount of the tax liability extinguished, according to the period of delay, as follows:

- if the extinguish is done in the first 30 days of maturity, and not due to late payment penalties are calculated for major tax liabilities extinguished;
- if the extinguish is done in the next 60 days, the penalty for late payment is 5% of the principal tax liabilities extinguished;
- after the deadline set out above, the delay penalty is 15% of principal outstanding tax liabilities remained extinguished;

These late payment penalties have a character on penalties and are designed to discourage voluntary noncompliance by default, overpass the limits prescribed by law, of fees, taxes, contributions and other amounts owed to the general consolidated budget.

In conclusion, the main effect of the existence of tax on dividends, income tax separately, is a cumulative tax profits distributed to affect the principles of fairness, neutrality and effectiveness in tax matters. Thus, the enterprise income tax can be considered an advance paid by the shareholder in respect of personal tax on the income imputation deposit which will be made when calculating the tax payable on dividends distributed.

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