

FISCAL ASPECTS CONCERNING INCOMES FROM INVESTMENTS

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Abstract: This paper aims at making a synthesis of the fiscal aspects related to incomes from investments earned by natural persons. We have taken into account the criteria used to classify incomes from investments. For each category of incomes from investments, we will present the obligations concerning the calculation, the calculation, declaration and payment of the tax on incomes from investments and social security contributions. In order to facilitate the understanding of how tax laws are applied, in the case of incomes from dividends and interests examples are given from the financial and accounting activity of the legal entities that are taxpayers for taxes on incomes from investments.

Key words: investments, dividends, interests, liquidation, tax, social security contributions.

JEL Classification Codes: M41, K34.

1. GENERALITIES CONCERNING THE TAXATION OF INCOMES FROM INVESTMENTS

The beneficiaries of incomes from investments are natural persons who earn incomes from: dividends, interests; incomes from transfers of securities and any other transactions with financial instruments, including derivative financial instruments; earnings from the transfer of investment gold; incomes from the liquidation of a legal entity.

From the fiscal point of view, we highlight the application of two taxation systems: one that implies withholding the tax, and the second, which implies self-assessed taxation.

If taxpayers of taxes on incomes from investments are legal entities, the tax is withheld, declared and paid to the state budget by the income payer. In such case, the notion of final tax emerges, which implies that incomes are not globalized in the single statement. Consequently, the income beneficiary does not have the obligation to declare the income from investments for taxation.

The second taxation system applied by self-assessment of taxes is related to the cases where the beneficiaries of incomes or losses from trading securities have the obligation to calculate, declare and pay the tax on incomes from investments to the state budget.

The taxation by withholding the tax is safer in terms of collection of tax receivables to the state budget. The self-assessed taxation is significantly influenced by the taxpayer's financial education.

For each category of income, we will present here in below the generating source and the obligations concerning the calculation, declaration and payment of the tax and social security contributions.



2. THE TAX REGIME OF INCOMES FROM INVESTMENTS

Dividend income

Dividends are distributed from the net profit, depending on the share held by each shareholder/associate in the paid-up social capital. The payment of dividends is optionally carried out quarterly within the term established by the general assembly of shareholders or, as the case may be, through special laws, the settlement of the differences resulting from the distribution of dividends during the year being done through the annual financial statements. The payment of the differences resulting from the settlement is made within 60 days from the date of approval of the annual financial statements related to the completed financial year. Source: Art. 67 of Law of companies no. 31/1990 as republished and updated.

Dividends are taxed by applying the rate of 5% to their sum, the tax is calculated and withheld on the day when dividends are paid. The dividend payer has the obligation to declare and pay the dividend tax by the 25th of the month following the month in which the dividend payment was made. In the case of dividends not paid by the end of the year, the tax is transferred by 25th January of the year following the one in which they were approved. The tax withheld by the dividend payer is final, and the beneficiary natural person does not have the obligation to globalize it in the single statement. If the beneficiaries of the dividends are Romanian legal entities, the Fiscal Code provides for the situations in which the dividends can be exempted from tax. A first set of conditions for tax-exempt dividends establishes the following rules: a) both the payer and the beneficiary of the dividends must be legal entities falling under the incidence of the Romanian laws; b) both the payer and the beneficiary of the dividends must be payers of profit tax or any other tax that replaces the profit tax, without the possibility of an option or exemptions; c) the legal entity that receives the dividends must own at least 10% of the equity securities for a period of at least one year up to and including the date of their payment.

Example of calculation of the dividend tax: a Romanian legal entity that pays profit tax has earned in 2021 a net profit of 150,000 RON. The General Assembly of Shareholders has decided that the net profit be distributed to dividends. The shares owned in the structure of the share capital are as follows: a natural person owns 80%; a Romanian legal entity owns 20%.

The criterion for distribution of dividends is based on the share owned by each shareholder in the share capital. Dividends paid to legal entities were deemed to meet the requirements for their inclusion into the category of incomes exempt from taxes. The situation related to the dividend tax results from the table below:

Table no.1- Situation of the dividend tax due

It. no.	Shareholders	P%*CS	Distributed dividends	Tax 5%
0	1)	2)	3)=2)*D	
1	Natural person	80%	120.000	6.000
2	Legal entity	20%	30.000	0
	Total	100%	150.000	6.000

*Key: P%*CS=Share in the share capital; D= Dividends*

The conclusion we can draw from the table above is that the payer of the dividends with holds a dividend tax in the amount of 6.000 RON, the natural person receives a net dividend of 120.000-6.000 =114.000 RON, while the legal entity receives a gross dividend of 30,000 RON.

According to the article published by Mr. René Schöb, Partner, Head of Tax & Legal KPMG in Romania: "From January 1st, 2023, the tax rate for dividends distributed/paid between Romanian legal entities, and for those distributed/paid to non-residents shall be increased from

5% to 8%>>. The author refers to the changes made to the Fiscal Code by ORDINANCE no. 16/2022 of 15 July 2022 amending and supplementing Law no. 227/2015 on the Fiscal Code, the repeal of some normative acts and other financial and fiscal measures. Due to the fact that taxation of dividends distributed to resident natural persons is regulated by article 97 of the Fiscal Code and this article was not amended by Ordinance no. 16 of 2022, we can conclude that dividends distributed to natural persons in Romania will continue to be taxed by applying the 5% rate.

Incomes in the form of interests

In practice, we can distinguish between two representative cases of sources generating incomes from interests. The first case is related to demand deposits, also referred to as current accounts, and time or term deposits, as saving tools. The second case is related to companies that borrow from natural persons, based on civil contracts.

In both cases, interests are taxed by applying the rate of 10% to their amount. The tax is final, meaning that incomes from interests are not subject to globalization.

The tax on incomes from interests is calculated by being withheld by the interest payer. In the case of interests related to demand deposits as well as term deposits, the tax is calculated on the day when the interest is recorded in the account holder. The day when interests enter the holder's account is the reference date both for the calculation of the tax and for its declaration and payment to the state budget. We should keep in mind that the interest payer has the obligation to declare the tax by the 25th day of the month following the one in which incomes from interests entered the holder's account.

In the case of companies borrowing from natural persons who are shareholders/associates based on a civil loan agreement, the tax is calculated, declared and paid to the state budget by the 25th day of the month following the one in which the interest was paid.

Example: In January 2021, based on a Loan Agreement, the sole shareholder deposits the amount of 10.000 RON at the cashier's office of the company. The supporting document is the collection order of the cashier's office. The repayment term is January 2022, with an interest in the amount of 1,000 RON.

The accounting records related to the collection of the loan, the presentation of the interests due, the taxation of the interests and the payment of the tax are shown in Table no. 2.

Table no. 2- Accounting of the civil loan agreement

It. no.	Date	Explanations	Debt	Credit	Amount RON-
1	31/01/2021	Loan collection	5311 Casa in lei	4551 Shareholders / associates – current accounts	10,000
2	31/01/2022	Interest due	666 Interest expenses	4558 Accrued interest on shareholders' – current accounts	1.000
3	31/01/2022	Withholding the tax on the incomes from interests 10%*1,000 = 100 RON	4558 Accrued interest on shareholders' – current accounts	446 Other taxes and similar liabilities	100
4.	31/01/2022	Payment of the interest by transfer (net after tax)	4558 Accrued interest on shareholders' –	5121 Cash in bank in RON	900

		current accounts		
5.	25/02/2022 Payment of the tax on incomes from interests	Other taxes and similar liabilities	Cash in bank in RON	100

Note: For the payer, interests are expenses. When the recipient is a natural person, interests are taxed by the interest payer. If the recipient is a legal entity, interest are recorded in the account credit <<Interest income>> and are included in the calculation base of the profit tax/Income tax of micro-enterprises owed by the interest recipient.

Incomes from the liquidation of legal entities

Legal entities that cease their activity can choose to be voluntarily liquidated followed by their dissolution. For this purpose, they need to follow the steps specific to liquidation: 1. Beginning of liquidation, and 2. End of liquidation.

In the first stage, the Resolution of the General Assembly of Shareholders/Associates or the Resolution of the Sole Shareholder concerning the date of the beginning of the liquidation is submitted to the Trade Register Office. This Resolution/Decision is sent for publication in the Official Journal of Romania.

The financial statements reflecting the situation of the patrimony and the profit and loss account at the date of the beginning of the liquidation are prepared and submitted to the competent tax body.

This is followed by an intermediary period of up to 60 days. During this stage, the existing assets are recovered and turned into cash and debts are settled.

After the recording into the accounting records of the operations specific to liquidation, a statement is obtained that shows the cash assets and the equity. The value of the equity equivalent to the contributions in cash and kind is subtracted from the total equity and the difference represents the income from the liquidation of the legal entities. The withdrawal of equity does not fall under taxation.

Incomes from the liquidation of legal entities are taxed by applying the rate of 10%. The tax is declared and paid by the payer of the income before the day of the end of the liquidation.

Example:

After the recording of the asset recovery and debt settlement operations in the accounting records, a company that is in the course of being liquidated submits the following situation of its assets and liabilities:

Table no. 3-Situation of assets and equity

It. no.	Assets	-	Liabilities	-RON-
1	Cash in banks	125,000	Subscribed and paid in share capital	20.000
2			Reserves	105.000
Total Assets		125,000	Total Liabilities	125.000

In this situation, the incomes from the liquidation of legal entities amount to 105.000 RON, the tax on the incomes from the liquidation of the legal entity is 10%*105.000+10.500 RON. The liquidation accounting records leading to the Balance Sheet with a null value are shown in Table no. 4.

The financial statements prepared for the date marking the end of the liquidation period contain a Balance Sheet with null values and are submitted with the competent territorial fiscal body.

One original copy of the Balance Sheet and the application for the deletion of the company from the Trade Register are submitted with the Trade Register Office. Following its deletion, the company ceases to exist.

The tax on the incomes from interests, dividends, and the liquidation of legal entities is declared: a) monthly by the income payer by means of Statement no. 100 concerning the payment to the state budget and b) annually by means of the Informative Statement of Taxes withheld at source and investment incomes/losses on income beneficiaries (Statement no. 205).

Table no. 4 Accounting liquidation operations

It. no.	Explanations	Debit	Credit	Amount
1.	Equity withdrawal	1012 subscribed and paid in share capital	456 Transactions with shareholders / associates related to capital	20.000
2.	Distribution of the incomes from the liquidation of the legal entity	106 Reserves	456 Transactions with shareholders / associates related to capital	105.000
3.	Withholding the 10% tax	456 Transactions with shareholders / associates related to capital	446 Other taxes and similar liabilities	10.500
4.	Tax payment	446 Other taxes and similar liabilities	5121 Cash at bank in lei	10.500
5.	Payment of debts to shareholders	456 Transactions with shareholders / associates related to capital	5121 Cash at bank in lei	10.500

The incomes from the transfer of securities or other financial instruments and financial gold

Taxpayers annually determine, based on supporting documents, the annual taxable net income or the annual loss.

The tax due is calculated by applying the 10% rate to the amount representing the annual net income.

The beneficiaries of these incomes have the obligation to submit the Single Statement and to pay the tax by the 25th May of the following year. Thus, mention should be made of the fact that, in the case of incomes from the transfer of securities, financial instruments and gold from investments, the self-assessed taxation system is applied.

The social health insurance contribution is due in the year of income generation, if the incomes obtained from several sources, presented in Table no. 5, exceed the ceiling of 12 minimum national gross wages. The sum due is calculated by applying the 10% rate to the equivalent of minimum national gross wages in force on the day when the Single Statement is submitted.

Table no. 5- Incomes taken into account for the calculation of the exceeding of the ceiling of minimum national gross wages* Source: Art. 155 (1) letters b)-h) of the Fiscal Code

It. no.	Income source	Fiscal Code
1.	Incomes from independent activities	Art. 67
2.	Incomes from intellectual property rights	Art. 70
3.	Incomes from the association with a legal entity, taxpayer according to Titles II, III or to Law no. 170/2016	Art. 125
4.	Incomes from rental and leasing activities	Art. 83
5.	Incomes from agricultural, forestry and fish farming activities	Art. 103
6.	Incomes from investments	Art. 91
7.	Incomes from other sources	Art. 114

Non-taxable incomes are not taken into account for the inclusion in the annual ceiling of 12 minimum national gross wages.

3. CONCLUSIONS

Dividends are conditional on the result of the activity of the company in which the shares are owned. In order for the company to distribute dividends, it is necessary to make a profit and the distribution of dividends must be approved by the General Assembly of Shareholders/Associates. Consequently, this method of investing has an uncertain nature. In the case of transactions with financial instruments, we also mention that this method of investing may lead to losses too.

In 2022, investments in government bonds have proven to be attractive, and interest has increased by approximately 4% and is not taxed. Natural persons can access the purchase of government bonds online, if they are registered as users of the virtual private space. We recommend to natural persons to invest in government bonds, in order to protect their financial resources against inflation.

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