

CONSIDERATIONS ON THE EXTENT TO FISCAL POLICY INTRODUCED BY GEO 34/2009

Diaconu Cătălin Ștefan

Spiru Haret University, Accounting and Finance Faculty, Rm. Vâlcea Rm. Vâlcea, str. G-ral Praporgescu, no. 22, tel. 0746192848, E-mail: easymoderogue@yahoo.com

Șuiu Ion

Spiru Haret University, Accounting and Finance Faculty, Rm. Vâlcea Rm. Vâlcea, str. G-ral Praporgescu, no. 22, tel. 0721926984, E-mail: nelusuiu@yahoo.com

Recently there was published an emergency order to introduce new measures in fiscal policy. Chapter V of this ordinance provides for a series of amendments to the Fiscal Code and Fiscal Procedural Code, as follows: Changes on tax on profit; Tax Changes on micro enterprises; Changes on expenses deductibility; Changes concerning differences from revaluation of fixed assets; Changes on the VAT deductibility and fiscal period; New contraventions regarding the final situations. In this paper we propose a presentation and an analysis of the tax policy, introduced by GEO 34/2009.

Keywords: flat-rate tax, flat rate, taxpayers, fiscal period.

Jel codes: M41

In the Official Journal, Part I, no. 249 of 14 April 2009 was published GEO no. 34/2009 regarding the budgetary rectification of 2009 and regulations of financial and fiscal measures. Chapter V of this ordinance provides for a series of amendments to the Fiscal Code and Fiscal Procedural Code, as follows:

- Changes on tax on profit;
- Tax Changes on micro enterprises;
- Changes on expenses deductibility;
- Changes concerning differences from revaluation of fixed assets;
- Changes on VAT deductibility and fiscal period;

New rules on tax set a minimum lump sum tax, even if the tax outcome achieved by the operators of paying such a tax is negative.

Flat-rate tax introduced in this Ordinance shall be determined on the basis of total income reported on 31 December of the previous year, as follows:

Taxpayers engaged in activities as night bars, night clubs, discos, casino or sports betting, including legal entities carrying out such income under a contract of association, and where the tax payable for specified activities is less than 5% of income, are required to pay a tax of 5% applied to this income.

Taxpayers who are not in the activities mentioned above and where the tax is lower than the minimum amount of tax revenue for the portion of the corresponding total are required to pay tax at that amount.

Amounts corresponding to minimum tax, determined according to the total income registered on December 31 of last year, are:

TOTAL ANNUAL REVENUE (lei)	ANNUAL MINIMUM TAX (lei)
0 - 52.000	2.200
52.001 - 215.000	4.300
215.001 - 430.000	6.500

430.000 - 4.300.000	8.600
4.300.000 - 21.500.000	11.000
21.500.001 - 129.000.000	22.000
Peste 129.000.001	43.000

Flat rate tax will take effect from 01 May 2009. Basically, starting this time, all taxpayers should pay at least minimum tax, even if they record a loss or no activity.

For allocation to the portion of total income are taken into account the total income derived from any source, recorded on December 31 of last year, less:

- income from stock variations;
- income from production of tangible and intangible assets;
- operating income, representing the share of government subsidies and other resources to finance investments;
- income reduction or cancellation of provisions for which no deduction was granted, according to legal regulations;
- income from debt cancellation and increases due to state budget, which were not deductible expenses when calculating taxable profits, according to legal regulations;
- income from compensation from insurance companies.

And the micro enterprises are affected by micro flat rate tax. It is true that micro-tax income is 3% in 2009, and no changes are foreseen to increase tax rates for years to come, but in the case of micro tax due is less than the minimum annual flat rate tax (same as that provided for tax profit taxpayers), they will be obliged to pay tax at that amount.

Taking into account that now we pass through an economic recession, and overall profit firms are affected by this measure and applying a minimum tax will result in the disappearance of many small IMM-s, the drawing and the decrease of the indirect taxes which are collected in the budget. When the economy is in recession, it should not be increased taxes whereas this rule affects small businesses.

Another measure to increase indirect taxation and to increase the revenue budget is to restrict the expense deductibility. Thus, expenditures on fuel used for cars to employees managing positions are not considered deductible expenses when calculating profit tax.

And the costs of maintenance and repair of these cars will be deductible limited to no more than one car each person associated with such tasks.

Also, during the 1 May 2009-31 December 2010 payment of corporate tax and individual self is no longer allowed to deduct expenses on fuel for road motor vehicles which are intended exclusively for road transport of people with a maximum authorized weight not exceeding 3500 kilograms and not more than 9 passenger seats, including driver's seat, are owned or used by the taxpayer, unless the vehicles are part in any of the following categories: -vehicles used exclusively for intervention, repair, security and protection, shipping, transport personnel to and from the place of business, and vehicles specifically adapted for use as a story which, vehicles used by sales agents and agents of employment;

- vehicles used to transport people, including the taxi;
 - vehicles for rental to others, including the activities of training in driving schools.
- Another measure provided by GEO 34/2009 is tax revaluation reserves. Reserves from revaluation of fixed assets, including land, after 1 January 2004, which are deducted in calculating taxable profits through depreciation tax or expenditure on leased assets and / or scrapped, the tax deduction with tax depreciation and at the time of fall management of these assets. Where a building, land or a fixed asset that have been reviewed after 1 January 2004 are sold, the revaluation reserve will be taxed at the time of removal from the asset management sold, not

when changing destinations such reserve as was previously stipulated. In this case, taxpayers can not benefit from tax postpone of the revaluation surplus.

In the Ordinance there are set out significant changes in respect of VAT. No longer deduct the VAT for purchase of road vehicles and motor fuel used by vehicles which are used exclusively for road transport of persons, with a maximum authorized weight not exceeding 3500 kilograms and not more than 9 passenger seats, including the driver's seat, except for vehicles which are part in any of the following categories:

- vehicles used exclusively for intervention, repair, security and protection, shipping, transport personnel to and from the place of business, and vehicles specifically adapted for use as a store which, vehicles used by sales agents and employment;
- vehicles used to transport people, including the taxi;
- vehicles are used for providing- payment services, including rental to others, driving training schools, the transmission in the use of a financial or operational leasing;
- vehicles used for commercial purposes, or for the purpose of resale.

Through the acquisition of vehicles for the purposes of this Ordinance shall mean the purchase of a vehicle in Romania, intra-Community acquisition or importation of the vehicle. Provision for limiting the right to deduct the VAT for vehicles purchase does not apply to advances that have been paid before 1 May 2009 for the total or partial road motorized vehicles, if delivery occurs after 1 May 2009 inclusive.

Provisions limiting the right to deduct the VAT for cars will apply until 31 December 2010 inclusive. Taxable persons who pay VAT will move to quarterly VAT per month with the month following the quarter in which acquisitions are intra community indifferent to the turnover achieved in the previous year.

These taxpayers must submit a statement of mentions in the tax jurisdiction, within a maximum of 5 working days from the end of that took place intra-Community acquisition. It constitutes contravention not fulfill the declaration in term, the summary of purchases and deliveries intra community (Statement 390) and the submission of incorrect or incomplete statements. These infringements are sanctioned with a fine of 2% of the total amount of purchases / deliveries of goods intra community undeclared or declared differences in addition, as a result of the submission of incorrect or incomplete statements. Basically, the fine can reach 10.5% of the VAT related to intra community acquisition.

Extract the following conclusions:

With the introduction of flat-rate tax, the investment value will be suspended. Therefore, the state will earn a flat rate tax, but will lose tax revenue from VAT. However, although many private enterprises have registered losses, with no connection with any investment, it does not fall within the Ministry of Finance has the burden of these tax losses. Market sanctioned it by self. Those who suffer loss are shareholders, directors and employees of a company, not the rule. Also, the minimum tax discourages large investments - acquisition of expensive technological equipment, depreciation through accelerated depreciation (guaranteed method of the tax) may generate tax losses, the companies that make such investments still pay the minimum tax on Real Estate Transactions made loss in this period of depreciation of assets are penalized with an additional cost.

The trade of motor vehicles and motorcycles - as in other EU Member States introduce measures to relaunch the activities of automotive industry and revive the market of vehicles which is affected by the financial crisis, the Government would introduce by this minimum additional tax supplementary costs to cars dealers, which further affect the competitiveness

Minimum tax encourages tax evasion - non-revenue; use of schemes to avoid the application of the provisions of this Ordinance by reclassification of revenues in some categories taxed more favorably. Applying a flat rate tax will lead to the closure of enterprises in conditions in which

they argue a weak middle class, formed in recent years. Do not say that the entire Romanian middle class is in small enterprises which are subject to a flat rate tax, but capitalism strengthening is not hitting in the middle class representatives, considering that are negligible share and not performing economic part.

Bibliography

1. Law 571/2003 on the Tax Code as subsequently amended and supplemented;
2. O.U.G. 92/2003 On the tax code with subsequent amendments;
3. O.U.G. 34/2009 published in Official Gazette, Part I, no. 249 of 14 April 2009;
4. Mariana-Cristina Cioponea-Public Finance and Fiscal Theory-Publishing of Maine Foundation Romania, Bucharest, 2006.
5. Ristea M- Financial Accounting of the enterprise- Universitară București Publishing House, 2005.
6. Staicu C- Accounting of economic units- Universitaria Craiova, Publishing House, 2008.