CONSIDERATIONS AND ARGUMENTS FOR CORPORATE TAX HARMONIZATION. COMPARATIVE APPROACH OF THE ROMANIAN FISCAL CODE AND FRENCH GENERAL TAX CODE

Anamari-Beatrice ŞTEFAN*

ABSTRACT: *Even with all the current debates on the harmonization of corporate income taxes within the European Union, the EU countries continue to support their own national corporate income taxes. Still, the growing integration of economic activity is placing bigger and bigger pressures on this problem, as transnational companies are operating more and more across Europe.*

Debates argue pro and con on this problem, EU, Companies or member countries have different opinions and arguments. The target of this paper is to analyze from a comparative perspective the Romanian and French corporate tax system and to find pro and con arguments for harmonization from the perspective of advantages and disadvantages for countries and companies.

KEYWORDS: *corporate tax, taxable profit, harmonization, tax system*
JEL CLASSIFICATION: *K 34, K 23*

1. INTRODUCTION

Although taxation is an attribute of national sovereignty, in terms of internationalization of commercial and financial trade, but also in terms of labor movement, the taxation policy of any state cannot take into account exclusively just the national interest. This situation worsened with the European project, firstly because of the single market and subsequently due to monetary unification. Under this context was raised the question of tax harmonization by integration of national tax policies in EU policies.

The withholding of the states in realizing tax harmonization is justified given the fact that the national tax system allows the state to maintain an economical and social policy, by having expenses and collecting incomes, it encourages consumption and savings – although their actions may have some effects on other states. Some obstacles regarding the structural differences between taxation systems need to be taken into account.

* PhD, University "Petru Maior" of Tîrgu-Mureş, Faculty of Economics, Law and Administrative Sciences, ROMANIA.

If in a first stage the harmonization of the indirect taxes was considered a priority of the European taxation policy, the harmonization of the direct taxes was not considered a necessity and it didn't appear in the Treaty of Rome. It was not considered compulsory for the common market and it was left to every sate to decide for itself. However, the effects of the lack of coordination that can affect the competitively between other states cannot be neglected, such as capital migration. Considerable efforts have been made for the harmonization of the fiscal systems, in terms of policy harmonization of indirect taxes through adoption of instructions. Currently, at European level, the discussions on harmonization continue towards indirect tax harmonization, for example corporate income tax. There are currently two directives relating to the fusion and the tax treatment of dividends to parent companies-daughter, pointing the idea of having a common corporate tax base across the group.

The advantages, disadvantages and effects can be outlined by observing different tax systems. Our aim is to make a comparative analysis of the income tax systems of France and Romania in order to identify the common elements, differences and effects that harmonization offers.

2. A COMPARATIVE ANALYSIS OF THE INCOME TAX IN FRANCE AND ROMANIA

The legal source of tax treatments of the expenses and incomes in France is the General Tax Code. It is differently structured from the Romanian Tax Code; it also has a higher complexity level and is more detailed, mainly due to constant references to other laws.

The general rules on expenditure are:

1.The base rule for accepting expense deduction has, in the French fiscal system, the same signification with the rule set in the Romanian Tax Code. According to the statement of the General Tax Code the expenses need to be made in the company's interest. In the Romanian Tax Code, is mentioned as a general rule the fact that an expense is deductible if it took place with the purpose of obtaining taxable incomes. They need to be the result of a normal management that automatically excludes the expenses due to fines and penalties.

2.The rule regarding the acceptance period for expense deduction mentions that these are deductible during the exercise in which are hired. Accounting errors are later corrected.

Special rules on limited or partial deductibility, or the non deductibility of some expenses are presented in both tax systems, some of these are:

Expenses due to renting and leasing are generally deductible, except the case in which the vehicle was purchased through financial leasing, situation in which deduction is limited to the changes of non deductible part from vehicle depreciation. This applies only to contracts closed on more than three months. In Romania deductibility presents itself as: in case of financial leasing the used deducts the interest, and in case of operational leasing the lessee deducts the rent.

Insurance premiums for property insurance are deductible as long as they aim to cover a risk that corresponds to the loss of an asset, an expense of operating risk or a risk

of insolvency of the costumer. These rules are presented also in the Romanian legislation by clarifying the conditions in which these expenses are not deductible.

In French legislation life insurance premiums are treated in three distinct cases:

1.The insurance contract signed in the interest of the company: "on the head of a human core" of the company, other than the company's management. The premium paid in this case is tax deductible. If the life insurance of a management person is paid it becomes a non deductible expense. The premium becomes deductible in the moment in which the risk takes place.

2.The insurance contract signed in the interest of a financial institution; if such insurance is required by a financial institution, premiums are deductible.

3.The insurance contract signed in the interest of the employees, the premium is a tax deductible expense.

In the Romanian Tax Code only the last two situations are mentioned, the third situation is different by the cost limit of the deduction made annually per person of the insurance premium that is 250 euro/person/year for health insurance and 400 euro/person/year for pension.

Employees' costs: salaries (need to correspond to an actual work regulated by contract) are deductible in both legislative systems.

In the case of family companies the French law has a special specification regarding the pay for the wife/ husband and social contributions. In the case in which the husband/ wife is neither a trader nor an artisan and the marriage is performed under the separation of property (i.e. all assets acquired before marriage and after are not common property, but are separated according to the wishes of both spouses and on the source of the assets) the salary is a deductible expense. If the spouses are not married under the separation of the assets and the company has an approved management, then the deduction is limited to 18.300 euro/year. On the other hand, if the company has an approved management then the deduction is total. In both cases social expenses are deductible.

In the French law the interest on loans which are included in the company balance sheet, if they were contracted in the company's interest, are deductible expenses.

In Romanian law interests have a special treatment depending on the crediting source respectively. Thus, in the case of a loan from a crediting institution or in the case of a bond loan, from which result marketable bonds, are fully deductible. In other types of loans, the expense deduction is limited as a function of two parameters, the degree of dept of the company (less than or equal to three) and the reference rate of loan of the NBR, respectively.

In both tax systems, when considering the expenses from assets disposal, the tax management of plus – value and minus – value is applied. The difference between systems appears from the fact that in the French legislature this kind of system is clearly stated as in Romanian legislature the tax practice imposes this aspect through the general rule of expense deduction.

In the French system the foreign exchange expenses are deductible if the loss is final, i.e. the operation was final. The latent foreign exchange losses that resulted from the reevaluation of the liabilities and the limit loans "are tax deducted, but without affecting the result sheet". In Romania the losses due to exchange rates (revenues from exchange

rate differences minus the expenses from the exchange rate differences) are deductible if they are the result of commercial actions and are treated as an interest expense for the loan contracted by the company.

Although there are no exceptional cost regulations in the Romanian accounting system, these are contained in the Tax Code. The following characteristics are presented:

- In the French law are not deductible the penalties that result from fines or from an abnormal management; but on the other hand are deductible the penalties on late payment. The Romanian legislature accepts the deduction of all expenses due to commercial penalties, considering non deductible just the penalties from Romanian or foreign authorities.

- In the French Tax system donations, gifts are generally nondeductible; the exception occurs if the donations and gifts are taken in the interest of the entity. Sponsorship expenses (expenses made to enrich the trade image of the company) are deductible.

- In the Romanian Tax system, no difference between donations or sponsorships is made; these are treated together and are nondeductible from the tax point of view.

If in the Romanian Tax Code the expenses due to fix assets depreciation in deductible as long as the asset meets certain conditions: is held and used by the company for normal business activities, has a tax value higher than a certain threshold and a life length bigger than one year, in the French legislature there are some special conditions applied in specific cases.

Synthetic treatment of depreciation under the French system contains the following:

1. Deduction conditions: the depreciation of the assets that are included in the balance sheet, that depreciates in time and that are not excluded from the other fiscal rules are deductible. The company may choose between three depreciation systems: linear, regressive or exceptional depreciation. The depreciation can be a deductive expense only if it is accounted for in gross.

2. Private cars: for them, the tax depreciation is deductible until a threshold: the value of 18.300 Euro is deductible for the vehicles registered before 1st November 1996. The non deductible part of the depreciation is left to be integrated in the profit.

3. Luxury goods: the luxury goods depreciation is non-deductible.

4. Rented assets: the deductible depreciation is equal to the sum of the rent minus the related expenses of the asset in cause. The extra outcome is reintegrated in the tax favor of the asset.

In the case of the incomes both systems tend to include in the tax a large spectrum of incomes. Thus the legislation enunciates a very small number of income categories that are excluded from tax. In Romanian legislature these revenues are stated in Article 20 of the Tax Code and are: dividends received from a Romanian legal person, positive value difference of shares arising from the incorporation of reserves, premiums and other financial situations, incomes from cancellation of expenses for which deduction was not approved, non taxable incomes provided for in other legislation.

The computation of the tax is based on the outcome of the final accounting result in the case of individual companies or partnerships, and for the companies that are subject to corporation tax the computation starts from the transitional accounting result.

A first feature of the French system is the existence of board members' remuneration in a joint stock company called "chips of presence" given for the presence in the board. Their deduction is applied as:

- If the company has at most five employees, the maximum deductible amount will reach 457 euro/ board member

- If the company exceeded five employees, the maximum deductible amount is equal to the outcome result after applying 5% to the medium annual remuneration of 5 or 10 employees (the ones with the higher salary) multiplied to the number of board members. For the companies with more than 200 employees, the deductible amount will be the remuneration of the 10 employees with the higher salary.

Another peculiarity is given by the interests on the current accounts of the associates. In some companies, the associates may decide to leave at the company disposal some amounts (dividends). When these amounts are placed in the company's account, it has the obligation to pay the associates interests that for the company represent financial expenses. These amounts can be deductible if the following are fulfilled:

- The capital needs to be paid in full

- Interest payments are not deductible, unless lower than a threshold that is equal to the average rates charged by banks for loans for the companies on a period bigger than two years.

- Such interest relates only to associates that have more than 50% of social rights or vote rights, interests are non-deductible unless lower than the amount of capital multiplied with 1.5 coefficient. This condition does not apply if the amounts are places in blocked accounts.

In the General Tax Code a particular tax treatment is given to plus – value and minus – value resulting from selling (disposal) of assets.

The computation of the plus and minus values is as follows: the input value on the balance sheet is reduced with the depreciation, thus resulting the net accounts. From the sale price is subtracted the net account value. If the selling price is higher (smaller) than the net account value, then a plus – value (minus - value) will be generated. There is a separate breakdown of the two values, highlighted in the tax law: plus/ minus value on short term and plus/minus value on long term.

Short term plus values are the results obtained by giving up tangible fixed assets that were held for a period of under two years (lands, vehicles, furniture), and long term plus – values are the values that appear after the disposal of shares and fixed assets held more than two years. Financial headlines held for more than two years and disposed off are considered as long term assets.

All plus – values are treated as taxable income and minus – values are treated as expenses and are withheld to the taxable outcome (for long term minus values the deduction is made in the next ten years from the long term plus value outcome).

Short term plus values are determined as an amount of all short term plus values in that period from which short term minuses are subtracted, and the condition of a plus value is that the sum of minus values is smaller than the sum of plus values. Net short term plus value taxing is spread over a period of three years: two thirds shall be deducted in the

year of the surplus and is taxed in the first two years following, and one third is reintegrated into the taxable result.

Net short term minus – value is a tax deductible item.

Long term plus – value is taxed at the reduced rate of 15% and therefore is not included in the tax result of the year but is considered outside.

If during a year a long term minus – value is registered, it needs to be reintegrated in the tax outcome. Also, long term plus – values of the next ten years and of the same nature as the long term minus – value, need to be charged.

Another feature of the income tax is the cutting of the tax credit. This concept refers to tax credits on dividends distributed by foreign companies, dividends that were once subject to withholding.

If the foreign state has a convention signed with France with regard to avoid double taxation, the French company should include in the tax the credits of the income tax (gross). This mechanism is not in the advantage of the companies as, if the tax credit is higher than the income tax; the difference of the paid amount is non-refundable. If the company chooses a tax regime for subsidiaries, then the tax credit paid by received dividends is not deductible.

Taken into account the legal form of business there are two cases for computing the income tax:

1. BIC (industrial and commercial advantage), tax result is related to the total turnover.

2. IS's (corporation tax):

Accounting tax result = result before taxes + reintegration – deductions (- deficit carried forward)

Unlike Romania where a flat tax of 16% is operating, the French tax system uses multiple tax rates, each specific to certain categories of incomes.

1. 0% tax rate applies in the case of long term plus – values obtained during a year, but taking into account just the ones that are the result of selling share stocks. However, this tax rate is only possible in the case the company reintegrates a share of 5% of the plus – value, the tax result taxed at normal value.

2. 15% tax rate is applied in two particular situations:

- In the case of long term plus – value, released during the year, except those from equity

- For small and medium size companies, they need to fulfill 3 conditions: to have a fully paid up capital; the social capital must be 75% owned by individuals and the turnover be less than 7.630.000 Euro. If all three conditions are fulfilled, the company benefits a tax reduction of at most 38.120 Euro. Everything above this amount is taxable at normal rate.

3. Normal tax rate is 33%

Tax on income, in France, is paid to the state through four installments. The first installment is different from the other three. The first rate (year N) is computed according to the tax benefit year N-2 (because data are unknown at the time of the first payment), rate 2, 3 and 4 are computed according to the tax benefit from year N-1, and at 2nd rate level an adjustment takes place. Rates are quarterly, and in the next year tax adjustments are made for the previous year.

Considering delays, a rate of 5% will be paid to an unpaid rate plus delay interests. If one of the previous years that are taken into account in determining the rates proves to be defective, the related rate will be zero but it will be regulated during the computation of the next rate, i.e. the rate of the next quarter.

New born companies are exempted from income tax payment for 12 month from establishment.

Another feature of the French tax system is the attachment of a social contribution paid by companies that have a higher threshold of 763 000 Euros to the computation of the income tax. Also the income tax may be reduced if the entity has made donations to some organization with general or public interest. The reduction granted is of 60% of the donated sum, up to a 5% from the turnover. If it overcomes the 5% from the turnover the amount is carried over the next five years.

The rule for reducing the tax for payment is applied also in the Romanian tax system but under the limit of maximum 20% from the calculated tax income, but not more than 3% from the turnover, without having the possibility of reporting the amounts that overcome these limits.

3. CONCLUSIONS

Analyzing the tax on profit of the two tax systems, we can conclude that the general approach is similar, based on the same general principles as far as it regards the general rules for cost deduction, but also some particular rules regarding the management of some costs (i.e. sponsorship costs)

At a first glance, the Romanian tax code seems to advantage more the tax payer regarding the tax rate or the low level of detail or complexity. Yet a deeper analysis reveals that the French system offers, particularly due to the superior level of detail, a system of incentives meant to stimulate different types of economical activities (small and medium enterprises) or a certain behavior for the companies (sponsorship activities).

Under this context we have asked ourselves in what way a possible harmonization in the field of tax on income affects the advantages of one system with respect to the other.

Thus we believe that the harmonization of the basic rate without the harmonization of the conditions for determining the tax on profit and of the taxable profit transforms the advantage of and emerging economy in disadvantage, due to additional facilities offered by well developed systems. It is a must to harmonize the way of determining the taxable profit before imposing rate harmonization. This is to avoid that the effects that come into view create disadvantages for the emerging economies.

We do admit that such a condition appears difficult, if not even impossible, to be achieved at the EU level because the tax laws continues to preserve particular elements due to traditions and cultural influences of each country. However we believe that a solution needs to materialize from a step by step approach in which the harmonization to be focused at first to some categories of companies (example: transnational companies). A first step would be the removal of all elements of double taxation on distributed profit to subsidiaries; the call of such an approach can create the premises of creating in turn a piloting and adjustment system for the harmonization decisions with regard to the created mechanisms.

The minimum requirements to be met by such a decision at European level must fulfill, in our opinion, at least the following: not to generate a high volatility of revenues from tax of member states, to offer companies advantages related to simplifying the way of determining the tax base, to allow the creation of an easy reporting system, to avoid the double taxation at EU level regarding tax on profit.

However we cannot ignore the fact that some propose alternative solutions to harmonization such as the development of a non mandatory legislation, by formulating recommendations that establish a framework for action, using a set of general rules or coordination strategies of the tax policies for making compatible different national laws and European treaties.

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