

Perspectives of the Modification of the Tax Burden in the Hotel and Restoration Industry, in the Context of Tax Pressure Generated by GEO No. 16/2022

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Abstract

The proposed Article sets out the tax burden on economic entities operating in the hospitality industry in terms of income taxation. We have presented theoretical legislative aspects regarding the specific tax trim, which remains in its full action until the end of the financial year 2022, but also illustrative examples that provide accurate information on the fiscal pressure felt by these economic operators. The prospect of increasing tax pressure in this industry is becoming clearer, following the amendment of the primary legislation in the field of taxation of these economic operators. Thus, the idea of applying the tax specific to these activities is abandoned by shifting to another form of income tax.

Keywords: *hospitality industry, specific tax, microenterprise income tax versus corporate tax, tax burden, tax pressure.*

1. Introduction

Horeca is a sector of the national economy that expresses an abbreviation for 3 words Hotels, Restaurants and Cafes (Catering), being most widely used in Europe, namely in Scandinavia (Sweden, Norway, Denmark, Iceland and Finland), the Benelux countries (Netherlands, Belgium and Luxembourg) and France. This term is used in the hospitality industry to convey very clearly an activity that simultaneously refers to accommodation and catering (food and drink) services.

Starting from 2017, according to Law no. 170/2016, Romanian legal entities paying profit tax that carry out accommodation and catering activities are obliged to pay the specific tax. In this sense, on April 14, 2017, the Order of the Minister of Tourism and the Minister of Public Finances no. 264/464 for the approval of the methodological rules for the application of this law.

The purpose of this article is to present this type of tax applied to entities in the HoReCa sector, whose existence ends on 31.12.2022, according to the provisions of GEO no. 16/2022 amending the Fiscal Code, and replaces it with the profit tax or the income of micro-enterprises. Also, some illustrative examples are presented from which we can draw certain opinions regarding the change in the tax burdens of entities in the hospitality industry.

2. Materials and methos

Studying the fiscal behavior of economic operators operating in the hospitality industry is a concern for us, given the implications it propagates for the Romanian citizen's leisure options.

A field strongly affected by the pandemic period, the hospitality industry recorded

- a decrease in turnover in 2020 compared to 2019 by 35% in relative terms, and in value terms from 27.5 billion in 2019 to 17.9 billion in 2020;
- the number of employees in hotels and restaurants decreased in 2020 compared to 2019

from 186,000 lei to 150,000 employees;

- The net profit recorded by companies in the HoReCa industry that are in surplus decreased by 46.5% to 2.49 billion lei in 2020, compared to 4.65 billion lei in 2019.

But not only the HoReCa industry itself is relevant in this analysis; its interconnection with other economic activities gives it a significant contribution to the evolution of some companies that develop businesses in related fields, such as agriculture, local suppliers of ingredients, producers and distributors of raw materials in the kitchen, importers and distributors of food products, dedicated service providers industry, as well as management systems, cleaning, transport, logistics, packaging.

Taxation constitutes the set of obligations to the tax office, as well as the means of collecting them, the regulations and practices relative to them. The immediate effect of the action of taxation is the encumbrance of the income of the payers, and from this perspective taxation creates constraint, pressure, sacrifice for them.

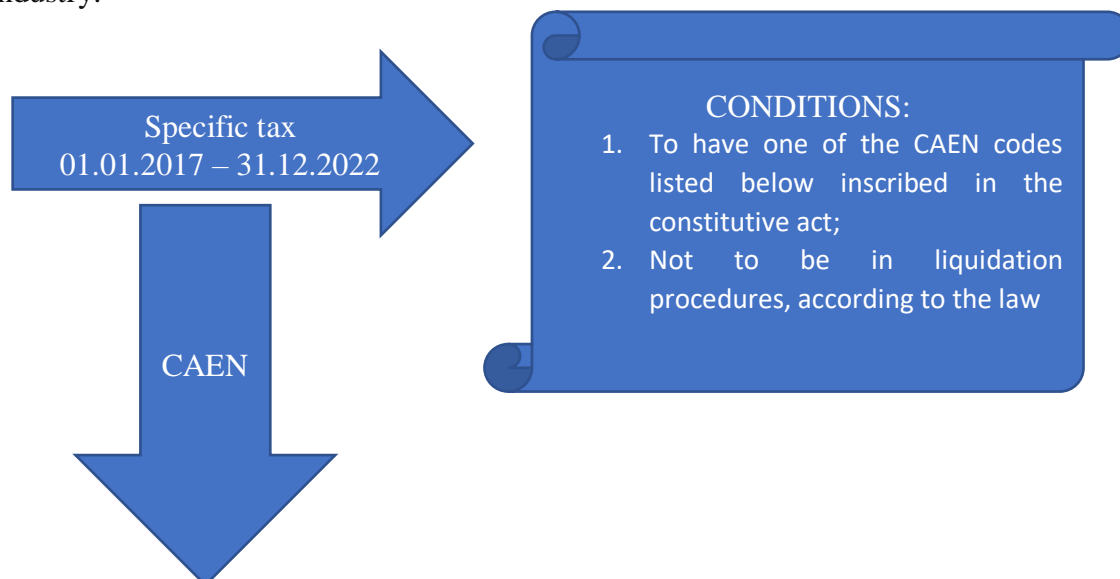
The tax is a form of forced collection at the disposal of the state, without direct consideration and with a non-refundable title, of a part of the income or wealth of natural and/or legal persons, in order to cover some public needs.

The documentary material we have referred to is the primary legislation we have regarding the direct taxation of the hospitality industry. This legislative package includes:

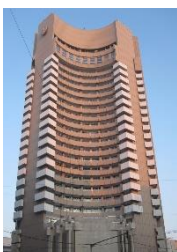
- Law no. 170/2016 regarding the specific tax for certain activities;
- The fiscal code approved by Law no. 227/2015;
- OMT no. 264/464/2016 for the approval of the Methodological Norms for the application of Law no. 170/2016 regarding the specific tax of certain activities¹;

The methods used by us to capture the fiscal pressure created on economic operators in the hospitality industry sector are descriptive and quantitative, relevant in this regard being the indicators of fiscal pressure. We have also used the method of analysis and comparison, given the change in the taxation system in the hospitality industry sector, through which we will analyze and compare the taxes owed today against those that will follow starting from the financial year 2023.

The tax legislation that currently governs the taxation of earnings in the hospitality industry is Law no. 170/2016 regarding the specific tax. It falls under the scope of the hospitality industry:



¹ Publicat în M.O. nr. 266 din 14 aprilie 2017;



5510 "Hotels and other similar accommodation facilities"
 5520 "Accommodation facilities for holidays and short periods"
 5530 "Caravan parks, campsites and camps"
 5590 "Other accommodation services"



5610 "Restaurants"
 5621 "Food activities (catering) for events"
 5629 "Other food services"



5630 "Bars and other activities serving drinks"

The following criteria were taken into account when establishing the taxable matter:

- Useful commercial/serving area for CAEN codes 5610 "Restaurants" and 5630 "Bars and other restaurant service activities", defined as the sum of the areas of lounges, terraces and summer gardens, according to the classification/authorization certificate;
- The useful area for carrying out the activity specific to CAEN codes 5621 "Food activities (catering) for events", 5629 "Other food services n.e.c.", defined as the total built area, according to the classification/authorization certificate.

Determination of tax for restaurants

Payers: restaurants, catering, other public food services

Calculation formula:

$$I_{sa/unitate} = k \times (x + y \times q) \times z$$

unde: $k = 1400$, valoarea impozitului standard (lei);

x = variabilă în funcție de rangul localității;

y = variabilă în funcție de suprafața utilă comercială de desfășurare a activității;

z = coeficient de sezonalitate;

$q = 0,9$ și reprezintă coeficient de ajustare pentru spațiu tehnic.

Table no. 1. Seasonality coefficients and the locality rank variable for a restaurant

Seasonality coefficient– z		
București, Brașov, Cluj-Napoca, Craiova, Iași, Constanța, Ploiești, Sibiu, Timișoara	0,45	
Towns, cities	0,35	
Tourist resorts of national interest	0,3	
Villages, communes and tourist resorts of local interest	0,1	
Variable according to the rank of the locality - x		
București	Zona A	17,0
	Zona B	16,0
	Zona C	15,0

	Zona D	13,5
8 poli (Braşov, Cluj-Napoca, Constanţa, Craiova, Iaşi, Ploieşti, Sibiu, Timișoara)	Zona A	15,0
	Zona B	14,0
	Zona C	13,0
	Zona D	11,5
Towns	Zona A	13,0
	Zona B	11,0
	Zona C	9,0
	Zona D	7,0
Cities		5,0
Resorts		5,0
Commune		3,0

Table no. 2. The variable usable area for a restaurant

The area between	Variable depending on the useful area of the location ("y" variable)
0 mp – 30 mp	2,0
31 mp – 50 mp	7,0
51 mp – 70 mp	12,0
71 mp – 90 mp	16,0
91 mp – 120 mp	21,0
121 mp – 160 mp	29,0
161 mp – 200 mp	38,0
201 mp – 240 mp	47,0
241 mp – 300 mp	58,0
301 mp – 400 mp	75,0
401 mp – 500 mp	80,0
501 mp – 600 mp	85,0
601 mp – 700 mp	90,0
701 mp – 800 mp	95,0
Peste 801 mp	105,0

Determination of tax for bars and other activities serving drinks

Payers: restaurants, catering, other public food services

Calculation formula:

$$I_{sa}/unitate = k \times (x + y \times q) \times z$$

Unde: $k = 900$, valoarea impozitului standard (lei);

x = variabilă în funcție de rangul localității;

y = variabilă în funcție de suprafața utilă comercială/de servire/de desfășurare a activității;

z = coeficient de sezonabilitate;

$q = 0,9$ și reprezintă coeficient de ajustare pentru spațiu.

Table no. 3. Seasonality coefficients and the locality rank variable for a bar

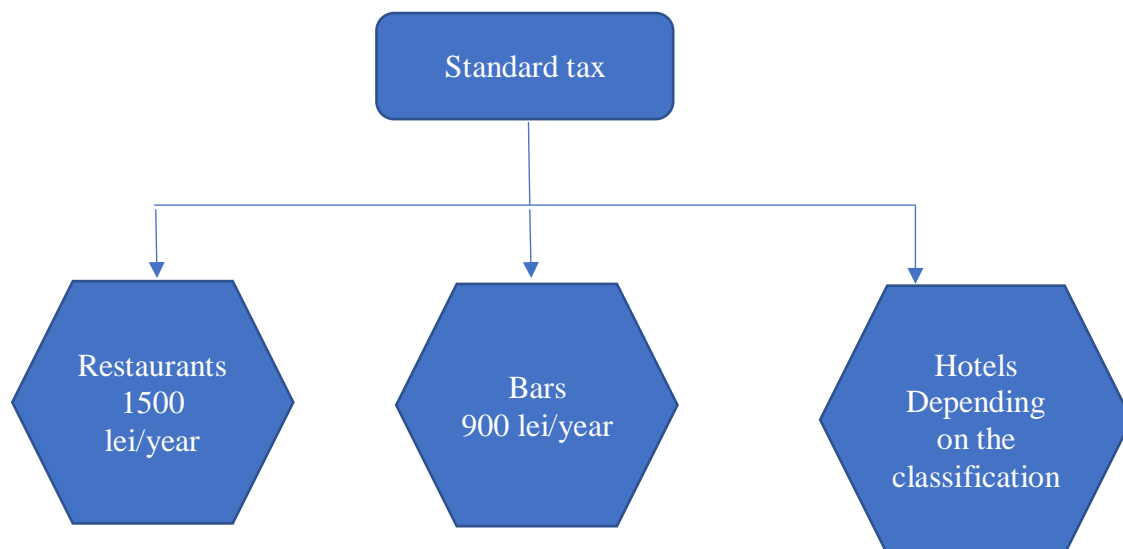
Seasonality coefficient– z	
București, Braşov, Cluj-Napoca, Craiova, Iaşi, Constanţa, Ploieşti, Sibiu, Timișoara	0,45
Towns, cities	0,35
Tourist resorts of national interest	0,3
Villages, communes and tourist resorts of local interest	0,1
The variable depending on the rank of the locality - x	

București	Zona A	16,0
	Zona B	15,0
	Zona C	14,0
	Zona D	12,5
8 poli (Brașov, Cluj-Napoca, Constanța, Craiova, Iași, Ploiești, Sibiu, Timișoara)	Zona A	14,0
	Zona B	13,0
	Zona C	12,0
	Zona D	11,0
Town	Zona A	12,5
	Zona B	10,0
	Zona C	8,0
	Zona D	4,0
City		2,0
Resorts		2,0
Commune		0,4

Table no. 4. The useful surface variable for a bar

The area between	Variable depending on the useful area of the location ("y" variable)
0 mp – 30 mp	2,0
31 mp – 50 mp	4,0
51 mp – 70 mp	6,0
71 mp – 90 mp	8,0
91 mp – 120 mp	10,0
121 mp – 160 mp	14,0
161 mp – 200 mp	16,0
201 mp – 240 mp	18,0
241 mp – 300 mp	20,0
301 mp – 400 mp	25,0
401 mp – 500 mp	30,0
501 mp – 600 mp	40,0
601 mp – 700 mp	50,0
701 mp – 800 mp	60,0
801 mp – 900 mp	70,0
901 mp – 1000 mp	80,0
Peste 1001 mp	90,0

The annual standard tax per unit is established by law, per type of unit, and is the basis for determining the specific tax owed by these units, according to a calculation formula:



The legislation applicable to this sector starting from 01.01.2023 abolishes the specific tax and gives the possibility to economic operators in the hospitality industry to submit either to the rules of the income tax of micro-enterprises or to the rules of the profit tax.

The microenterprise income tax is 1% for microenterprises that have one or more employees. However, economic operators in the hospitality industry do not have to meet the requirement regarding the number of employees, nor the requirement to have a turnover of less than 500,000 euros/year.²

Determining the tax on the income of micro-enterprises

Payers: micro-enterprises, which meet the conditions stipulated by the Definition of micro-enterprises, from art. 47 para. (1) from the fiscal code.

Tax rate: 1%

Taxable base: income from any source, except those provided by art. 53, para. (1) of the Fiscal Code

Calculation formula:

$$I_v = V_T \times 1\%$$

Deadline: this tax is calculated and paid quarterly to the state budget, no later than the 25th of the month following each quarter.

Determination of profit tax

Payers: taxpayers provided for in art. 13, para. (1) and para. (2) fiscal code.

Tax rate: 16%

Taxable base: taxable profit



Formulă de calcul:

$$I_{pr} = P_{ri} \times 16\%$$

Unde: V_T = venituri totale;

C_T = cheltuieli totale;

C_n = cheltuieli nedeductibile;

V_n = venituri neimpozabile

P_{ri} = profit fiscal impozabil

I_{pr} = impozit pe profit

Starting from this fiscal-accounting information, we notice that we are dealing with 2 different economic categories: profit and income. In the accounting sense, revenues are flows generated from the operating and financial activity of a company, and profit denotes a

² Art. 47, alin. (1), lit. c) și alin. (2) din Legea nr. 227/2015;

result that remains after deducting from revenues the costs incurred to obtain those revenues. It follows that starting from 01.01.2023, economic operators in the hospitality industry will have to pay attention to the amount of income or profits, as these become the taxable bases for determining their tax burden.

In the specialized literature, the fiscal pressure is calculated as the ratio between the taxes and contributions due and the amount of GDP. Regarding our study, we will calculate and analyze the fiscal pressure borne by economic operators in the hospitality industry by referring to the company's turnover, a parameter that most faithfully expresses the volume of the company's activity, in gross form. Using this indicator, we will capture how much an enterprise allocates from its turnover to paying tax and we will do this by comparing specific, income and profit tax.

3. Results and discussions

Under the conditions of applying the specific tax, in the case of restaurants, it will have the following values, with an example for a restaurant with an area of 130 square meters:

Table no. 5. The specific tax for a restaurant

Restaurant location	Specific tax for a restaurant
Commune/village	$1400 \times (3 + 29 \times 0,9) \times 0,1 = 4\ 074$ lei
Resorts	$1400 \times (5 + 29 \times 0,9) \times 0,3 = 13\ 062$ lei
Municipality area A	$1400 \times (13 + 29 \times 0,9) \times 0,35 = 19\ 159$ lei
Braşov area A	$1400 \times (15 + 29 \times 0,9) \times 0,45 = 28\ 893$ lei

In the case of a bar, cafe, with an area of 120 square meters, the annual specific tax due is calculated as follows:

Table no. 6. The specific tax for a bar

Bar/cafe location	Specific tax for a bar / cafe
Commune/village	$900 \times (0,4 + 10 \times 0,9) \times 0,1 = 846$ lei
Resorts	$900 \times (2 + 10 \times 0,9) \times 0,3 = 2970$ lei
Municipality area A	$900 \times (12,5 + 10 \times 0,9) \times 0,35 = 6772$ lei
Braşov area A	$900 \times (14 + 10 \times 0,9) \times 0,45 = 9315$ lei

Let's take as an example a restaurant in zone A which, starting from 01.01.2023, has to choose between the profit tax and the tax on the income of micro-enterprises;

Case: a restaurant presents the following accounting information for the first quarter of 2023; we will determine how much this restaurant would pay to the state budget if it chose the profit tax system or the income tax system:

Table no. 7. Example of tax calculation at a restaurant, after 01.01.2023

RESTAURANT			
Accounting quantities	Abbreviations	Profit tax	Micro income tax
Total income	V_T	100.000	100.000
Total expenses	C_T	40.000	40.000
Taxable accounting profit	P_{ri}	60.000	60.000
Tax due	I_d	9.600	1.000 lei
Fiscal pressure	P_{rf}	9,6%	1%

Calcule:

$$Pri = V_T - C_T = 100\,000 - 40\,000 = 60\,000 \text{ lei}$$

$$I_{pr} = Pri \times 16\% = 60\,000 \times 16\% = 9\,600 \text{ lei}$$

$$I_v = V_T \times 1\% = 100\,000 \times 1\% = 1\,000 \text{ lei}$$

$$I_d$$

$$Prf = \frac{I_d}{M_i} \times 100 = \frac{9600}{100000} = 9,6\%$$

4. Conclusions

Based on the research of the documentary material composed primarily of the primary legislation in the field, we found that the taxation of units in the hospitality industry was based on other taxation criteria than income or wealth. Compared to other economic operators, whose earnings are taxed according to the amount of income and/or profits, the HoReCa sector was imposed, in order to determine the tax due, criteria such as: the seasonality of the business, the rank of the locality where it operates, the useful area of the location. GEO No. 16/2022 amending and supplementing the Fiscal Code eliminates this type of taxation of these companies and leaves them free to choose between:

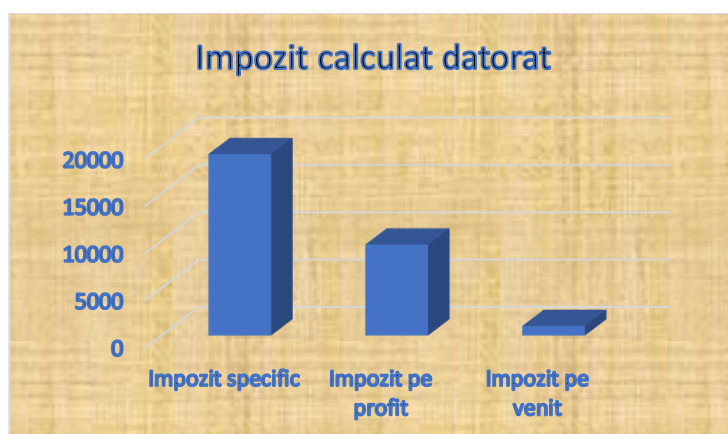
- Income taxation with 1%, or
- Taxation of profits at 16%.

Regardless of the form of taxation that these economic operators choose to adopt, the legislator created the prerequisites for respecting the principles of fiscal equity, as they were formulated as maxims by Adam Smith, in the book *Wealth of Nations*; the absolute and relative tax burden of each taxpayer to be established according to his contributory power, which is dependent on the amount of income and taxable assets, as well as the personal situation of the taxable subject.

In the case analyzed by us, we can draw the following conclusions:

Table no. 8. Comparison of taxes owed by a restaurant in 2022 and 2023

Types of tax	Calculated tax due
Specific tax	19159
Tax	9600
Income tax	1000



In this case, we considered a cost margin (fixed and variable) of the restaurant of about 40%. Compared to this average cost margin of a restaurant, we can say that, through the changes made to the fiscal legislation regarding the taxation of restaurants, there has been a fiscal relaxation, reducing the fiscal pressure felt by them in terms of the taxation of earnings. It

can be observed that through the specific tax due, it took more into account parameters, such as the rank of the locality, the usable area, seasonality; aspects that from 2023 are removed and give restaurants the possibility to be taxed: profit or turnover.

Observing not only the percentage rate that is different between the taxation of profits and incomes, but also through detailed analyses, we can state that the turnover tax tends to become more advantageous for the hospitality industry sector as well, in terms of the amount of tax owed, but also in terms of flexibility, ease and way of managing it. Of course, apart from the cases in which these types of economic operators obtain accounting and fiscal losses, in which case in the variant of taxation of profits, the fiscal pressure borne by them would become 0.

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