

LEGISLATIVE FEATURES IN THE MATTER OF CORPORATE TAX: PRIVATE EDUCATIONAL INSTITUTIONS AND ACTIVITIES OF RESEARCH– DEVELOPMENT

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Abstract

There are often discussions about the „dramatic” situation of the underfinancing of education and of research-development, about the continuous undervaluation and marginalization by the decision makers of these essential components of social life. In this context developed step by step in Romania the private educational system as well, preferred due to the material resources these units have, due to the motivated teachers, the methods used to outline the personalities of the children, etc.

Key words: *corporate tax, exemptions, deductions*

Introduction

The national educational system must be able to assure the competitiveness and prosperity of the country in a period, when the future is more and more dominated by economies and societies based on knowledge.

In this context are welcome all the measures (including fiscal ones) of sustaining the education, the research-development, regardless of their forms of organization (public or private).

According to article 8 from Law no. 1/2011 “for the financing of national education will be yearly allocated from the budget of the state and the budget of public local authorities minimum 6% of the gross domestic product of the respective year. Additionally, the educational units and institutions can obtain and autonomously use their own incomes. For activities of scientific research it is yearly allocated from the budget of the state minimum 1% of the gross domestic product of the respective year”.¹ In the same time, another principle of financing education is one, according to which the state assures the basic financing for the foundation stage and for all the pupils attending an approved general compulsory education unit of the state, private or confessional. Furthermore, the state assures the basic financing for professional education or for approved high school education, belonging to the state, private or confessional, or for the post-secondary education of the state. Financing is made based on and within the limits of the standard costs per pupil or per pre-school child, according to a methodology developed by the Ministry of Education and Scientific Research. The private and confessional education is organized according to the non-profit principle of preuniversity education institutions, at all levels and forms, according to current legislation.

¹ Law no. 1 from 5 January 2011 about national education published in the Official Gazette of Romania no. 18 from 10 January 2011 including subsequent amendments and additions.

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The criteria, standards and performance indicators, which have to be met by the private and confessional preuniversity education institutions are identical to those, which have to be met by the educational institutions of the state.

Private education units are free, opened and autonomous units, from an organizational perspective, as well as from an economic-financial perspective, the cornerstone being the private property, guaranteed by the Constitution of Romania.

The approved private and confessional preuniversity education units must be sustained by the state, the conditions being established by Government decision. But even if this provision is stipulated in the content of the law, the state still lacks sufficient resources to support and coordinate private education respecting its rights. Thus we can observe that the provisions of the law of education, concerning the basic financing of the approved private preuniversity education is extended until December 31, 2016.²

Currently the corporate tax is still regulated by Law no. 571/2003 concerning the Fiscal Code, but beginning with January 1st 2016 we have to take into account the new law in fiscal matters, respectively Law no. 277/2015 concerning the Fiscal Code³, both normative documents providing essential information for every taxpayer, in order to follow and understand the tax burden, to be aware of the fiscal principles, mechanisms and procedures, so that eventually the taxpayers can analyse the influence of the decisions of financial management upon their fiscal burden.

According to the current legal provisions⁴ among those who benefit from corporate tax exemption we can also find the approved and/or authorized private education institutions. The above mentioned entities benefit from this aspect in case in which the incomes are used in the current year or in the next years according to the regulations concerning the education, for instance activities of improving material resources (incomes earned by these taxpayers from economic activities, but are used for purposes other than those expressly provided by law, fall under the tax rate of 16%).

We should mention, that given the legal framework in the matter of assuring the quality of education, any legal, public or private person interested in providing education was subjected to the evaluation and accreditation process, before starting their activity (procedures being differentiated according to educational form, preuniversity or higher education). The education providing organization and other legal person, who according to his status, develops educational activities based on legally authorized programs. For example, according to the basic form of Government Emergency Ordinance no. 75/2005 regarding quality assurance of education⁵, an education provider could be a commercial company, which according to its status develops legally authorized activities or programs of initial or continuous training. If this company, founded and organized according to the provisions of

² See art. 36 from the Government Emergency Ordinance no. 83/2014 published in the Official Gazette of Romania no. 925 from 18 December 2014. In the same subject see also the address of the Vice-President of the Commission for education, science, youth and sport – Chamber of Deputies, registered under no. 72724/02 June 2015, on subsidizing private education in Romania. This document addressed to the Minister of Education and Research is based on a memorandum submitted by the National Union for Private Education Development in Romania (UNDIPPR), which draws attention to the lack of subsidies of the state budget to support private education. This Union, representing the interests of the private authorized and/or approved education institutions, invokes the total lack of budget financing and promoting of some normative acts which “exclude or discriminate” private education.

³ Published in the Official Gazette of Romania no. 688 from 10 September 2015

⁴ Art. 15 paragraph 1 letter g of Law no. 571/2003 including subsequent amendments and additions.

⁵ See art. 2 lit. b of the Government Emergency Ordinance no. 75/2005 published in the Official Gazette of Romania no. 642 from 20 July 2005

Law no. 31/1990⁶ has as activity object compulsory primary education, particularly, from fiscal point of view, the company was taxpayer and was subjected to the corporate tax obtained from this type of activity. For this legal person are not applicable the provisions of Law no. 571/2003 regarding to Fiscal Code, Title II, art. 15, paragraph (1), letter g) concerning the exemption from corporate tax, because the normative act expressly refers to private education institutions accredited and authorized⁷.

In terms of research-development, in calculating profits subjected to corporate tax, some fiscal deductions or incentives are applicable for the expenses of this nature, namely: a) additional deduction by calculating the taxable profit, in a rate of 50% of the eligible expenses for these activities; the additional deduction is calculated quarterly / annually; b) application of the accelerated amortization method in the case of appliances and equipment destined for research and development.

In the application of Fiscal Code rules concerning the deductions for research-development expenses were drafted, approved by the Order of the Minister of Public Finances and of the Minister of Education and Scientific Research⁸.

Fiscal incentives are granted for research and development activities, leading to obtaining results of research, which can be fully exploited by taxpayers; carried out both on national territory and in the European Union member states or in countries belonging to the European Economic Area.

Research-development activities eligible for additional deduction when establishing the taxable profit, must be part of the categories of applied research activities and/or technological development relevant to industrial or commercial activity carried out by the taxpayer.

Fiscal incentives are granted separately for research and development in each project.⁹

Among the eligible expenses taken into account by granting the additional deduction in determining taxable profit we mention the followings:

- a) expenses with amortization or with or renting tangible and intangible assets, or some of these expenses for the period of use of tangible and intangible assets in research and development activities;
- b) expenses with personnel involved in the research and development activities, including activities related to support them (documentation, conducting studies, experiments, measurements, exchange of experience);
- c) operating costs, including: expenses on third-party services, expenses on consumables, expenses related to materials of inventory objects, expenses on raw materials, parts, modules, components;
- d) overheads that can be allocated directly or proportionately to research results by using an allocation key; the allocation key is the one used by taxpayers to allocate common costs: in the category of overheads allocated directly, the followings may be included: rent of the location where they carry out research and development activities, provision of utilities such as: water supply, sewerage, sanitation, electricity and heat etc.

⁶ Law no. 31 from 16 November 1990 concerning companies, published in the Official Gazette of Romania no. 126-127 from 17 November 1990, republished in the Official Gazette of Romania no. 1066 from 17 November 2004, including subsequent amendments and additions.

⁷ It must be also considered the fact, that in order to legally function, private education must be organized on non-profit principle, must have teachers, a basic material and sufficient financial resources in order to develop educational activities

⁸ See Order of the Minister of Public Finance and Minister of Education and Scientific Research no. 256/3331/2015 amending and supplementing Rules on deductions for research-development expenses la in determining taxable income, approved by Ministry of Public Finances and of Minister of Education, Youth and Sports no. 2086/4504/2010 published in the Official Gazette of Romania no. 178 from 16 March 2015.

⁹ See art. 19¹ from Law no. 571/2003 concerning Fiscal Code

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Due to the continuous concerns to improve and simplify the provisions of the Fiscal Code, and due to the dynamic development of the business environment and to the evolution of the economic, social and political realities, the consolidation of the fiscal-budgetary politics was assessed, by rewriting of the Fiscal Code. Thus, through the complex modernization process of fiscal legislation was created Law no. 227/2015 concerning the Fiscal Code¹⁰.

Please note that among the legal persons, who are paying corporate tax, the current legislation (Law no. 571/2003) delimits two categories of taxpayers exempted from the payment of the tax, integrally or partially, for certain types of incomes: legal persons fully exempted from the payment of corporate tax (see art. 15) - the State Treasury, the National Bank of Romania; legal persons exempted from corporate tax for certain types of incomes - these people are eligible for a special tax regime based on their legal status.

According to the new legal provisions, in case of the approved and/or authorized private higher education institutions in the calculation of the fiscal results the following types of incomes are considered to be non-taxable incomes: incomes obtained and used in the current year or in the following years, according to the legal legislation in the domain of national education.

Conclusions

In conclusion, we must remember that education policies should permanently contribute to the development of the Romanian society, and in this context any supporting measures are welcome. Only by also promoting the private components of education and research-development can be assured a systematic, efficient and coherent reform of the educational process.

Starting from the principle of the general right of every person to freely choose the state or private education unit he or she wants to attend, differential treatments cannot be applied, and the law of education must be respected also regarding to the financing regime of the latter.

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¹⁰Law no. 227 from 08 September 2015 concerning the Fiscal Code, published in the Official Gazette of Romania, no. 688 from 10 September 2015, by which, starting from 01 January 2016 Law no. 571/2003 concerning the Fiscal Code is abolished.