

ACCOUNTING AND TAX TREATMENT OF DIVIDENDS- TYPE GAINS

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Abstract: The remuneration of the owners of the entity for the capital invested by them is of particular concern for the management of the company. It must be taken into consideration on one hand to serve the interest of the owners consisting in the gain of a part of the obtained profit in a short period of time, and on the other hand to reverse the applicable accounting and tax regulations. Also, the management of the company is highly interested in carrying out this type of operations in terms of cost optimisation as far as obtaining the information is concerned, in order to determine the amount of dividends due to the shareholders.

JEL classification: M41, K34

Key words: dividends, tax, shareholders

1. INTRODUCTION

Generally, the dividends consist in the gain obtained by the owners of an economic entity through the distribution of the profit as a result of the developed activities.

By appealing to the relevant regulatory framework, a quota represents a share of the profit that must be payed to each shareholder¹, or it can be considered a type on income that as far as taxing is concerned, can be classified as an investment².

The determination of the befitting amounts is accomplished through the decision of the general shareholders' assembly (AGA), based on the financial situation of the entity. Since the results of the company are definitive at the end of the financial year, in most cases, the distribution of the dividends is done based on the annual financial situations. However, there may also be policies regarding dividends granting during the financial year, based on the positive quarterly result obtained by the economic entity, as a consequence of the relatively recent changes in the legislation area³, which may allow the company to distribute dividends quarterly. For the practical

¹ Law no. 31/1990 1) of the economical entities - Republication, M. Of. 1066 since 17.11.2004, art. 67 (1).

² Law 227/2015 The fiscal code, with subsequent amendments and additions, M.Of. 688 since 10.09.2015, art. 91, lit. a.

³ Law 163/2018 for the amendment and completion of the Accounting Law no. 82/1991, he amendment and completion of the Economic entities' law no. 31/1990, as well as the

implementation of this last matter, the preparation of the interim financial statements is highly necessary. This aspect implies that elaborating these financial statements is a laborious process that involves going through stages similar to those regarding the closure of the tax year. In order to clearly display this matter we may highlight processes such as carrying out the inventory of the patrimonial elements, or assaying and auditing the financial statements.

Also, it is worth mentioning the fact that these financial statements are clearly regulated as they target both the entities that compile these individual and consolidated annual reports, as well as the ones that fall under the scope of the International Financial Reporting Standards. The submission deadline to the territorial units of Public Finance Ministry counts 30 days after the approval of the general shareholders' assembly. Moreover, since at the end of the tax year it is necessary to have the adjustment of the dividends that were distributed during the year with those determined at the end of the period, there may be cases where requests can be made in order to reimburse the amounts that had already been paid to the owners during the financial year. In this situation, the management of the company is obliged to move for the recovery of these amounts within 60 days after the approval of the annual financial statements, including the determination of certain penalty interests.

2. OBJECTIVES

The objectives of the present research refers to the process of dividends granting taking into consideration the terms of carrying out this action during the development of the activity, within both the financial year and at the end of it, in the context of the establishment of the final fiscal results.

In this respect, are emphasised the decision-making processes that must be adopted by the management of the company in order to align the concerns of the involved parties to obtain gains from the capital investment effected by the economic entity on one hand, and on the other hand to rightsize the costs regarding the option of granting dividends base on the interim financial statements.

3. METHODOLOGY

The research methodology considered inn the present research paper is based on the observation and analysis of the main aspects found in reference literature as well as in the regulatory framework. Subsequently, as a part of the undertaken research we analysed the approach concerning the distribution of dividends during the tax year, as well as at the end of it, so that it may be possible the issuance of certain opinions regarding the enforceable accounting and tax treatments.

4. RESULTS AND DISCUSSIONS

4.1 Dividends distribution during the tax year

amendment of the law 1/2005, concerning the organisation and functioning of the company, M. Of. 595 since 12.07.2018.

As previously mentioned, within the accounting policies established in the company, it is also possible to issue a decision of granting dividends starting from the partial results established in the interim financial reports. This type of approach can be put into practice after a stringent analysis concerning the main aspects that are involved, and at the same time after an appropriate briefing of the participatory parties. In our opinion, there is a certain pressure from shareholders to obtain gains of this nature in shorter timescales. This way, the economic entity is urged to determine the quarterly financial results with a higher level of stringency, taking into consideration the fact that based on these results the capital owners are remunerated.

Therefore, the companies must go through a series of stages prior to the financial statements elaboration, which in terms of workload are similar to the ones effected at the end of the tax year. According to the applicable aforementioned regulations, the economic enterprises that choose to distribute dividends quarterly, have the obligation to take inventory of the elements such as assets, liabilities, and dividends. This operation involves a great workload that must be carried every quarter as it requires procedures that imply the identification and assignment of the people that will be in the inventory committee, the creation of the organisational framework for the proper inventory process, the resolution of the results starting from the record compiled by the committee, etc.

In the same context can be qualified the fact that after the completion of the inventory process and creation of the balance sheet that should include the results of the aforementioned activity, it is necessary to draw up the interim financial reports, statements that have a special purpose, intended exclusively for the distribution of dividends during the financial year. This matter also implies a considerable workload, due to the fact that here can be found the main constituents contained by these, depending on the category in which is classified the economic entity, the accounting audit or the financial position, as well as the profit and loss account, or the situation of the total comprehensive result.

Having in mind the facts previously presented it can be stated that an important matter that needs to be taken into consideration when it comes to deciding the interim distribution of the dividends, consists in the increase of the workload if the described operations are implemented with our own staff, or the advance of the costs as far as providing these type of services are concerned, when they are outsourced.

Another matter that needs to be considered in the context of the elaboration of the interim financial statements is represented by the assay and audit of these, depending on the nature of the existing regulatory obligations as far as this purpose is concerned. Thus, the tasks undertaken by the censors or the auditors consist in additional activities that imply a separate cost.

The accounting and fiscal treatment of the quarterly distribution of dividends is summarised in the sequence of operations presented below.

- the distribution of the dividends according to the general assembly of the shareholders:

463 Receivables representing dividends distributed during the tax year	=	456 Transactions with shareholders/ related to capital	Amount approved by the general assembly of the shareholders
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- taxation of the amounts that are due to shareholders:

456 Transactions with shareholders related to capital	=	446 Other taxes and similar liabilities	Tax according to the regulations of the fiscal code
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- payment of net amounts representing interim dividends due to shareholders:

456 Transactions with shareholders related to capital	=	5121 Bank accounts in lei Or 5311 Petty Cash in lei	Due net amounts
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These operations are registered identically in the other quarters, using the same procedures that were described previously.

In the following financial year, based on the results obtained in the one recently concluded, found in the annual financial statements, the amounts distributed as dividends during the tax year are regularised by comparing these with the dividends determined for the results of the whole year.

From an accounting point of view the described operations are registered as follows:

- dividends distribution of the final amount based on the financial statements and according to the AGA decision:

1171 Profit/ loss carried forward representing undistributed profit or uncovered loss/ analytical profit	=	457 Dividends payable	The amount approved in AGA
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- adjustment of the interim dividends based on the final dividends:

457 Dividends payable	=	463 Receivables representing dividends distributed during the tax year	The amount approved in AGA according to the interim financial statements
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After the adjustment operation two different situations can be observed, whose accounting and tax treatment are presented below.

- the value of the dividends paid during the taxable year is lower than those established for the entire taxable year, in which case the difference is taxed and the remaining payment due to shareholders is paid:

457 Dividends payable	=	446 Other taxes and similar liabilities	Tax according to the fiscal code
	And		
457 Dividends payable	=	5121 Bank accounts in lei Or 5311 Petty Cash in lei	Due net amounts

- the value of the dividends paid during the taxable year is higher than those established for the whole period, in which case it is necessary to reimburse the amounts that were collected additionally by the shareholders, within 60 days, as well as the adjustment of the related tax:

5121 Bank accounts in lei Or 5311 Petty Cash in lei	=	463 Receivables representing dividends distributed during the tax year	Amounts that were collected additionally during the taxable year
	And:		
446 Other taxes and similar liabilities	=	463 Receivables representing dividends distributed during the tax year	Tax related to the amounts settled additionally, according to fiscal code regulations

4.2 Distribution of dividends after the end of the taxable year

The determination and payment of dividends after the end of the taxable year as the final results obtained by the entity are known, defines an operation that involves a reduced workload and costs, compared to the situation previously exposed. This for this statement can be legitimated through the fact that the operations preceding the preparation of the financial statements are carried out only once, therefore, with a lower volume of work compared to their quarterly performance, a matter also valid in the situation of the cost checking and auditing the annual financial statements. Therefore a single mission of this nature, results in reduced related costs

In addition to this, this case states that dividend distribution can be done from both the profit of the recently concluded taxable year, as well as the profits from previous year.

Also, from a tax point of view, the taxation of dividends, regardless of the taxable year in which these were obtained, is taxed at the rate provided by the Fiscal Code for the current period.

The progression of the accounting procedure and of the proper tax treatment is displayed as below:

- the distribution of dividends from the profit of the recently concluded year or that of previous years, according to the annual financial statements and the AGA decision:

1171	=	457	The amount
Profit/ loss carried forward representing undistributed profit or uncovered loss/ analytical profit		Dividends payable	approved in AGA

- taxation of the distributed dividends:

457	=	446	Tax according to the
Dividends payable		Other taxes and similar liabilities	fiscal code

- payment of the withholding tax:

446 Other taxes and similar liabilities	=	5121 Bank accounts in lei Or 5311 Petty Cash in lei	Tax according to the fiscal code
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- payment of net dividends:

457 Dividends payable	=	5121 Bank accounts in lei Or 5311 Petty Cash in lei	Due net amounts
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5. CONCLUSIONS

Dividends distribution implies a careful analysis from the the economical entity's management team. It must take into account the development of the proper procedures in order to allow this operation in compliance with the applicable regulations in the area.

As it can be observed from the result of the research undertaken, the implementation of a dividends' distribution policy during the taxable year requires an additional effort as far as the company is concerned in terms of involved human resources and costs.

As such, the entity's management must ensure an optimal balance between effective cost management and the pressure exerted by the shareholders regarding their emolument from the obtained profit, as soon as possible.

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