OPTIMIZATION OF FISCAL COSTS IN ROMANIA'S COMPANIES

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Abstract: In the context of the current global economic and financial crisis where the need to capitalize is increasing, the process to gather additional financial resources which is generated by fiscal costs' optimization is acquiring new traits. Although fiscality imposes certain rules and procedures, it also provides the potentiality to choose among several variants. This option system can be used by enterprises according to the goals they have at certain times. In compliance with international legislation and practice, no one is compelled to pay more fees and taxes than those stated by fiscal legislation. Taxpayers have the right to decide upon the way they shall observe fiscal legislation, the place where they are to perform their activities and pay taxes, who is subject to taxation and fiscal duties : as individuals or businesses, residents or newcomers. It is the legitimate right of taxpayers to optimize their fiscal costs in accordance with fiscal laws.

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1. INTRODUCTION

Fiscal costs are important elements of any business or transaction costs. Some authors believe fiscal costs are an expression not only of taxation rates, but also of payment terms and duration of debentures' or fiscal losses' reclaim.

Removing certain forms of fiscal incentives to which the economic crisis effects are added brings forth the need for Romania's companies to optimize such costs.

Optimizing fiscal costs means any activity performed within the legislation whose aim is to decrease fiscal duties. It generally takes place according to the interests of lawmakers, not by argumentations or interpretations of laws in the favour of taxpayers alone.

To manage taxes and fees with respect to their optimization does not mean to infringe laws. Operations, transactions, taxable categories, transaction subjects and other information related to fiscal improvement are transparently and properly described in all the compulsory accounting and fiscal reports of taxpayers.

The paper herein shows a few important aspects that Romania's companies should take account of regarding the fiscal costs' optimization strategy. Thus, there is an approach of the way certain factors may influence companies' fiscal costs, concrete fiscal optimization techniques and methods, as well as the issue of fiscal improvement limits.

2. IMPACT FACTORS IN FISCAL COST OPTIMIZATION

An activity's juridical organization form influences fiscal results due to the separate taxations, especially concerning business revenues/profits and investor compensation by the payment of dividends or business remaining net value.

Each juridical organization of activities has different impacts upon an enterprise.

As far as an activity's juridical organization form is concerned, if there is an authorized individual or individual enterprise, there are numerous advantages and disadvantages.

The advantages when choosing such a juridical form are: authorized individuals are fully entitled to make decisions unlike joint stock companies, limited liability companies or limited partnerships where decisions are made during the General Meetings of Stockholders/Stakeholders; an investor may access the cash generated by their business without justifying its destination; authorized individuals' net revenues are taxed only once if they have chosen real system taxation. As to trading companies and small enterprises, the net revenues that actually go to investors are subject to double taxation; revenues are taxed as really collected amounts from which the expenses during financial exercise are deducted, unlike trading companies and small enterprises which set their expenses and revenues according to accrual accounting; an easier bookkeeping is another advantage for authorized individuals as the expenses related to bookkeeping are largely reduced; the regime of tangible and intangible assets depreciation lies on the same principles as those of the entities that are subject to income taxes; the capability to immediately leave a business when investors choose to, without any high costs as compared to trading companies where such a process is costly and long-lasting.

The disadvantages when organizing activities as an authorized individual or individual enterprise are: the transfer to another fiscal entity of the same activity is not allowed as it happens in trading companies. An authorized individual shall have to operate only with such a fiscal entity unlike the case when an investor decides to transfer his/her activities from a trading company to another; the income tax is paid beforehand every three months and it is adjusted at the end of a year according to the data of the previous year; a fiscal loss can be redeemed during the following five tax years which does not happen with entities paying profit taxes and recovering their losses during the following seven tax years; investors guarantee their performance development with their personal patrimony, being more exposed to creditors as compared to the other organization forms.

If the choice of an activity organization juridical form is being a trading company, then the advantages are: a fiscal loss is recovered during seven years; personal goods are protected against creditors due to the strict separation between business patrimony belonging to a trading company and an investor's personal effects; it can be applied as organization form of large and profitable investment.

The disadvantages of the juridical organization form as a trading company are the following: taxation occurs by estimating the dutiable base, the taxable profit or turnover mostly lead to tax payment before actually collecting revenues according to the principle of accrual accounting, the more shareholders/stakeholders, the more difficult it is to make operational decisions; the profits made by investors double firstly when profit taxes or small enterprises' revenues are paid and secondly when dividends are paid; the duty to draw up annual balance sheets and often to audit or certify them; investors/stakeholders may receive dividends only after the annual financial standings have been approved.

In addition to the way trading companies are set up, joint-stock companies have the following advantages: those listed can attract funds from the financial market; they can do certain business such as in the fields of finance, banking and insurance which cannot be performed otherwise than by means of such a juridical organization form; investors can get some of their dividends in advance by means of such companies' buying the former's own shares back.

The main disadvantages of a joint-stock company in relation to the other trading companies are: there is more strictness than in other trading companies when operational decisions are made; conduct restrictions imposed by the legislation of the industry that a taxpayer belongs to or stock exchanges (for listed entities); the liquidation of joint-stock companies is costly and often takes longer (especially for public entities) than for other types of trading companies; the obligation to audit or certify annual financial standings and internal control activity costs.

Business lifetime influences fiscal costs by the ability to choose a company's dissolution/activity suspension date. Thus, a fiscal entity can significantly reduce its fiscal duties.

It is preferable for the lifetime of an entity through which main business is performed not to last longer than three years. Good practice has shown that more than three tax years remained unchecked by fiscal bodies lead to the occurrence of additional fiscal costs to taxpayers which are more often than not quite high.

The taxation method of added value – value added tax payer or non-payer has the following influences upon the results of an enterprise: if there is no big difference between the payment date and the issuing date of a bill of sale, it is financially more favourable not to pay value added taxes; it is financially more favourable for the entities whose turnovers are not higher than the limits provided by the law (Fiscal Code) and which do not purchase high-value fixed assets not to become value added tax payers. If such entities generate profits and keep the same selling prices of their products or services as if value added tax payers, they shall register increased profits with payment value added tax which should have been reimbursed if these entities had paid the value added tax; exporters and those who mainly sell in the European Union are directly concerned with paying the value added tax because they can reclaim the VAT they have paid for the acquisitions within the country.

Business type and nature (industry, trade, agriculture, transportation, services etc.) influence: certain facilities especially for industrial activities in terms of profit tax calculation and fast fiscal redemption; the payment of value added tax when renting and leasing is made on the date stipulated by the contract for such services; for example, when there are agricultural activities, the payment date of profit taxes can be made only once a year.

The accounting policies used directly influence the recognition of taxable revenues and inferential expenses when calculating profit taxes (which rely on accounting profits) and of taxable revenues of small enterprises.

Business financing method – loans, stakeholders, banks, leasing, and other funds influence deducibility when calculating the profit tax or the tax of an authorized individual's income upon the expenses and interests related to such financing.

The legal restrictions imposed by the industry where an enterprise works or by the general legislative framework influence the mobility and flexibility of an entity when finding the right fiscal solutions. Such restrictions involve maintaining certain financial or operational criteria (a certain level of capital, assets held, stakeholders etc.) which make it difficult to find solutions to decrease corresponding fiscal costs.

The way to leave the business – a significant cost when ceasing business irrespective of the suggested variant, starting from its sale until voluntary liquidation or insolvency is represented by the related fiscal costs. In such circumstances, all major fiscal duties are affected, starting from profit and revenue taxes, value added tax and the fiscal duties regarding salaries.

Dividend distribution – dividends' payment in kind or cash, their payment date and place may have separate fiscal costs. For instance, if there is a payment in kind with business patrimony assets, VAT can also be paid in addition to dividend taxes.

Current and predicted fiscal facilities supplied by the legislative framework – the use-up of the legal framework to implement such facilities is obviously the desire of all taxpayers. The way they are implemented affects taxpayers' fiscal costs.

Taxpayers' market and supply locations – local or export are influential as far as value added tax is concerned. VAT is most affected by the geographical area of taxpayers' market. Therefore, the option to become a VAT payer can be justified as long as the VAT paid on acquisitions can be returned to exporters or deliverers within the European Union.

The amount of foreign services under contracts and the residence of such services' suppliers – as far as enterprises' service acquisitions with such entities are concerned, the fiscal treatment of outsiders' income taxes related to the payment of these services may be influenced by these providers' residence (if there is a double taxation agreement for taxes and fees between their residence country and Romania).

Transactions with affiliated parties are specially important in the calculation of profit taxes regarding taxable revenues or acquisition costs incurred by an enterprise with the group entities.

Employees' number, residence and remuneration method directly influence wage fiscal costs and inferential expenses during profit or revenue tax calculations for authorized individuals having wages. There are different situations for employees coming from the outside. Remunerations in kind can also incur VAT payment.

3. Ways to optimize fiscal costs

The concrete ways to improve fiscal costs within a company reside in making adequate decisions and implementing them with respect to decreasing fiscal expenses.

One method of fiscal optimization is a company's ability to benefit from certain fiscal inferences or facilities while identifying outstanding taxes. The state's granting some facilities meant to stimulate the development of certain activities has an influence upon fiscal costs by lowering the taxable base and implicitly cutting company fiscal expenses.

Moreover, during the activities performed within companies, accounting principles and methods can be used in order to influence fiscal tasks. Thus, by means of approved accounting policies, companies may choose a variant from among several opportunities allowed by legislative and normative statutes. For instance, entities can choose the: method of fixed assets depreciation; interest capitalization or its recognition as expense; option for stock evaluation method; revaluation of fixed assets or keeping their historical costs.

The companies uses one of the depreciation regimes below:

- linear depreciation done by equally including some fixed amounts into exploitation expenses set in proportion with the number of years during which they are economically used;
- the system of regressive depreciation which means multiplying linear depreciation quotas by a certain rate when the legislation in force can be taken into account;
- the system of accelerated depreciation which means including during the first working year a depreciation of up to 50% of the fixed assets entry value into exploitation

expenses. Annual depreciation for the following financial exercises are calculated upon the remaining value to be amortized after the linear regime as compared with the remaining years of use.

Choosing from among the three methods to depreciation fixed assets has different influences upon company accounting results.

The system of regressive depreciation shall lead to a lower level of fixed assets, higher expenses and smaller results, respectively lower fiscal costs during the first years.

As to accelerated depreciation, since calculated amortization should be correlated to fixed assets usage method and a fixed asset is rarely exhausted up to 50% during the first year, the consequence is that the accelerated depreciation method is less used with accounting purposes.

Additionally, companies may choose between interest capitalization and its recognition as an expense. According to basic accounting, interest expenses are to be recognized as expenses at the times of their emergence, whereas alternative treatment allows the capitalization of these costs as they can join the construction of the respective asset.

These accounting treatments have distinct impacts upon an enterprise's fiscal costs. The basic accounting treatment leads to recognizing certain high expenses during practice which decreases profit taxable base and implicitly outstanding profit taxes, since interest expenses are wholly inferential at present and interest expense deductibility depends on capital loan level. Their deductibility is currently integral if capital loan level is lower than or equal to three. If not, they are carried forward to the following period up to their integral deductibility.

Alternative accounting treatment allows the capitalization of loan costs which removes them from the register of expense accounts within exercises, as they are capitalized in asset costs. Yet, this treatment helps avoid expenses within the current exercise as these capitalized costs are to be subsequently found within the expenses of future exercises by means of redeeming the respective assets. Consequently, loan costs are shared along several exercises and expenses are gradually deducted from taxable results.

Companies may choose the application of one of the following stock evaluation methods:

- the method of first input – first output – FIFO. The goods drawn out of an inventory are assessed at the acquisition or manufacturing costs of their first entry/input.

- the method of balanced average cost (Ro.CMP). This method implies the calculation of each element cost according to the balanced average of similar element costs in stock in the beginning and the costs of similar elements manufactured or purchased during the respective period of time. The average can be calculated periodically or after each reception. The calculation period should not exceed the average storage duration.

- the method of last input – first output – LIFO. The goods drawn out of an inventory are evaluated at the acquisition or manufacturing costs of the last entry/input.

The method of stock evaluation used by a company has various impacts upon fiscal costs, as follows: the LIFO method leads to stocks' lower value, higher expenses and worse results; the FIFO method leads to higher stock value, lower expenses and better results.

Entities can proceed to reevaluating fixed assets in the end of financial exercises so that they can be reported in accounting documents at their just value and the results of such reevaluation are reflected in the balance sheets of the respective exercise. The value ensuing from reevaluations belongs to assets instead of the acquisition costs/manufacturing costs of any other value assigned to these assets before.

The differences coming from reevaluations influence company results, respectively its fiscal costs.

Companies may choose the taxation of revenues related to hire purchases when the respective installments mature and the related expenses are deducted at the same due date. Thus, one can avoid recognizing current high revenues and increasing profit taxes.

Another method to decrease fiscal costs is an enterprise's orientation towards free zones or declaredly under-privileged zones whose development has benefited from tax exemption or substantial tax cut-down.

As to company groups having intricate stocks structures which force them to pay high taxes, the structure reduction by creating holding companies might bring about the optimization of total fiscal costs at group or shareholder level.

A holding separates juridical from commercial forms and the consequence is the emergence of several companies selling and buying within a corporation. There are countries which encourage holding companies since they do not tax the latter excessively, they allow tax exemption for certain capital collection or dividends, and they more easily manage the other companies within a group.

This organization method can be used by Romanian companies, too, which run their business outside country borders and have subsidiaries in other countries. In this manner, setting up a holding in a country encouraging such companies means they no longer pay taxes for holding profits which although possibly low may strengthen the results of companies held.

Another way to improve fiscal costs is a company's ability to restate certain current operations or activities in order to modify their fiscal nature which can lead to an increase in fiscal costs.

Fiscal cost optimization is also the consequence of an enterprise's financial management decisions. They influence fiscal costs by affecting taxable bases which in turn set the size of their fiscal tasks.

4. FISCAL COST OPTIMIZATION AND FISCAL RISK

The main risk of fiscal cost optimization is its prospective association with tax evasion. Specialized literature attempts to find a definition able to comprise all the complexity of tax evasion phenomenon. A definition provided by Fiscal Law is good enough stating that tax evasion means evading taxable base from taxation.

Such evasion from fulfilling budgetary duties can take place either by correctly applying fiscal laws in favour of taxpayers – when tax evasion is legal, or by willingly and consciously going beyond the law which means unauthorized tax evasion.

Tax evasion under favour of the law allows evading a part of the taxable base without being a contravention or a crime.

Legal tax evasion may be possible as the legislation in various world states allows the tax evasion of certain revenues, parts of revenues, fortune constituents, or certain deeds and actions which should not avoid taxation in the context of rigorous observance of the legislation in force and taxation principles.

An example of legal evasion allowing some of the revenue to get out of taxation are the fiscal facilities granted to economic agents in various economy branches when they start or during their activities such as the exemption of import or export value added tax or excise payment etc., or profit tax decrease.

Legal evasion is also represented by investing some of the achieved accounting profit in the manufacturing and/or acquisition of technological equipment, devices used to get taxable revenues, investment which the state grants tax exemption.

Tax evasion under favour of the law can be avoided by adjusting, improving and enhancing the legislative framework.

Fraudulent tax evasion is more frequent than legal evasion and takes place by infringing legal provisions and relying on frauds and dishonesty.

International frauds in the field of value added tax, more precisely intra-community deliveries and acquisitions, have led to substantial revenue losses.

Tax fraud frequently occurs in various forms such as: false bookkeeping; deliberate destruction of documents that can help find the truth about goods deliveries, actual prices, commissions received or paid etc.; drawing up fictitious payment papers; unjustified change of supply prices and transportation, handling and storage costs; making up false customs statements when importing or exporting goods; drafting false taxation statements where only some of the achieved revenues are deliberately included etc.

Another risk is related to taxpayers' incomplete or imperfect application of the fiscal solution suggested by fiscal strategies, which can obviously lead to the lack in right results or even to the risk of associating the respective solution with tax evasion.

An enterprise must obey basic term rules imposed on it by fiscal law. Thus, it risks to be fiscally controlled which supposedly emphasizes all irregularities.

The financial consequences of a checking procedure can be extremely difficult to an enterprise as its negative image may occur or its financial balance may be compromised. Enterprises must set up fiscal strategies mainly oriented to the identification and especially prevention of fiscal risks.

Achieving important sometimes accidental operations imposed by development outside an enterprise's current performance – mergers, reinforcements, foreign relations require the implementation of the financial rules the enterprise has not practised before. Such an approach of new fiscal rules necessarily involves a certain fiscal risk. For this reason, the enterprise should ensure internal supervision typical of fiscal rules. Even if an enterprise cannot remove fiscal risks, it can at least confine them. It has the ability to identify them during several stages of fiscal supervision and promote the efficient management of financial resources avoiding losses subsequent to penalties, sanctions etc.

5. CONCLUSIONS

An enterprise's existence and performance take place in an environment where the State by means of its fiscal institutions is very much present, with high requirements that force companies to difficult, ceaseless and complicated journeys through laws, decisions, regulations. Thus, there are numerous situations when business decisions are strongly influenced by fiscal consequences.

The effective realization of fiscal management objectives takes place through the company's fiscal policy, as a concrete manner of use of specific instruments and techniques of fiscal optimization. Therefore, fiscal policies chosen by the company with the purpose of diminution or deferral of pressure of taxation can refer to the optimum determination of profits, restructuring operations, choice of the company's juridical form, depreciation methods, choice of the VAT taxation system, decision for investments, instruments of money investment, modalities of investments' financing, the way of allocation of the net profit etc.

Within the legal framework set up by the public authority, in order to tackle an issue, an enterprise can choose from among several accounting methods and techniques whose fiscal incidences are different. Fiscal options of economic agents have limits, though. Firstly, it is the matter of juridical limits in order not to reach tax evasion. Then, one should take account of an opportunity limit which derives from an enterprise's general policy whose challenges are certain strategic objectives. Sometimes, the best fiscal choice does not necessarily happen to be the best solution to an enterprise from the perspective of its growth strategy.

Effective fiscal management helps optimize fiscal costs within an enterprise. Successful fiscal management implies an enterprise's ability to blend fiscal strategies with fiscal risks. Ensuring fiscal security should remain the concern of any enterprise's economic leadership. This is one of the classic aspects in company relationships with fiscality.

Fiscal management has to promote a certain fiscal policy aiming at decreasing risks and uncertainties. Rating tax, fee and duty expenses should be done so that to reach the possibly lowest legal level. But one should not ignore the fact that fiscal cost minimization must not affect the usefulness and credibility of financial statements.

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