

Audit of Fiscal Obligations at Economic Entities from Romania

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Abstract: The audit of fiscal obligations, or the fiscal audit, as it is also called in the specialized literature, can be considered both as an integral part of the financial audit of the annual financial statements, and as an independent audit. Fiscal obligations are obligations that all economic entities in Romania have and that have a special characteristic, respectively they bear interest and penalties for delay or non-declaration. These fiscal obligations are part of the budget revenues and represent the support of the expenses that the state administers. From another point of view, the level of these fiscal obligations and the way in which they are declared and paid, constitute reference points for the partners of the respective entities - state authorities, shareholders, banks, creditors, suppliers, customers, employees, and others. An entity that has up-to-date tax obligations, proves financial stability and security for all individuals and legal entities with which it interacts. even more so because of financial instability or even imminent bankruptcy.

Keywords: shareholders; bankruptcy; taxation; obligations; stability

The fiscal audit represents that audit performed on the fiscal obligations - direct and indirect taxes and duties- due by an economic entity.

According to ISO 8402, the audit is “a methodical examination carried out to determine whether the activities and results relating to the subject matter meet the pre-established provisions and whether these provisions are implemented in an effective and appropriate manner in order to achieve the objectives”.

As a general notion, by audit (“hearing”-listening) is meant a professional examination of information in order to express a responsible and independent opinion, by referring to a criterion (standard, norm).

Fiscal obligations represent those taxes and duties owed by entities, arising from the activities carried out by them, both their own (profit tax, income tax of micro-

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enterprises, excise duties, land tax / tax, car, VAT, etc.), and those withheld from various sources (employees, copyrights, dividends, etc.). At the same time, we can introduce tax facilities, exemptions and deferrals to the payment of taxes, subsidies, as well as fiscal amnesty

In fact, the total payment obligations of an entity represent precisely this difference between what is owed in its entirety, on the one hand, and what was paid by the entity and / or was exempted / canceled by the tax authorities, on the other hand.

A special category is represented by the category of “tax credit” and which represents according to the fiscal code:

- “19. tax credit method - a reduction of income tax or profit tax with the amount of tax paid in another state, according to double taxation conventions;
- 20. method of exemption - the tax exemption of income or profit obtained in another state, taking into account that income or profit for the determination of the tax rate applicable to the total income / profit obtained, the tax rate determined applying only to the remaining income / profit after deducting income / profit obtained in that other State, in accordance with the Convention for the avoidance of applicable double taxation;

The external fiscal credit is granted by deducting from the tax due in Romania the tax paid abroad - taking into account each source of income - up to the level of the tax due in Romania, thus avoiding double taxation. In this sense, Romania has concluded bilateral agreements.

The fiscal code (law 227/2015), includes all the taxes, duties and contributions that are due by residents and non-residents, on the territory of the country. We will review them, mentioning some important details about each one, just to understand the complexity of the work. submitted by the financial auditor. We will also see what documents and audit evidence are necessary to be analyzed in order to form the audit opinion.

1. Profit Tax

It is due by:

“ART. 13 - Taxpayers

(1) The following are obliged to pay the profit tax, according to this title persons,

hereinafter referred to as taxpayers:

- a) Romanian legal entities, with the exceptions provided in par. (2)
- b) foreign legal entities that carry out activity through a registered office permanent/ several permanent offices in Romania;
- c) foreign legal entities that have the place of exercising the effective management in Romania;
- d) foreign legal entities that generate income as provided in art. 12 lit. h);
- e) legal entities with their registered office in Romania, established according to European legislation

The profit tax rate is 16%.

The calculation method of the profit tax is:

“ART. 19 - General rules

1. The taxable income shall be calculated as the difference between the income and expenses recorded in accordance with the applicable accounting regulations, less taxable income and tax deductions, plus non-deductible expenses. When establishing the fiscal result, they are also taken into account items similar to income and expenses, according to methodological rules, as well as losses fiscal which is recovered in accordance with the provisions of art. 31. The positive fiscal result is taxable profit and the negative tax result is tax loss.

(2) The fiscal result is calculated quarterly / annually, cumulated from the beginning of the fiscal year.

(7) In order to determine the tax result, taxpayers are required to file in the register of fiscal records the taxable incomes registered in a fiscal year, according to par. (1), as well as the expenses incurred for the purpose of carrying out the economic activity, in the same fiscal year, including those regulated by normative acts in force, according to art. 25.

ART. 41 - Declaration and payment of profit tax

1. The calculation, declaration and payment of corporation tax, except as provided herein shall be carried out quarterly, until the 25th of the first month following the conclusion quarters I - III. The finalization and payment of the profit tax related to the respective fiscal year is performed until the deadline for submitting the declaration regarding the profit tax provided in art.42.

2. Microenterprise Income Tax

“ART. 47 - Definition of the micro-enterprise

(1) For the purposes of this title, a micro - enterprise is a Romanian legal entity which cumulatively meets the following conditions, as of December 31 of the previous fiscal year:

c) realized incomes that did not exceed the equivalent in lei of 1,000,000 euros. Exchange rate for the determination of the euro equivalent is the one valid at the end of the financial year in which revenues were recorded;

d) its share capital is held by persons other than the state and the units administrative-territorial units;

e) is not in dissolution, followed by liquidation, registered in the trade register or at courts, according to the law.

(2) The provisions of par. (1) shall also apply to Romanian legal entities falling within the scope of the Law no. 170/2016 regarding the tax specific to certain activities. The provisions of this title shall prevail by the provisions of Law no. 170/2016.

ART. 49 - The scope of the tax The tax established by this title, called the income tax of micro - enterprises, shall be applies on the taxable basis determined according to art. 53.

ART. 51 - Tax rates

(1) The income tax rates of micro-enterprises are:

a) 1% for micro-enterprises with one or more employees;

c) 3% for micro-enterprises that do not have employees.

ART. 56 - Payment of tax and submission of tax returns

1. The calculation and payment of income tax on micro-enterprises shall be made quarterly, until the 25th of the month following the quarter for which the tax is calculated .

3. Income Tax

ART. 58 - Taxpayers

The following persons are liable to pay tax under this Title and are hereby appointed taxpayers:

- a) resident individuals;
- b) non-resident natural persons who carry out an independent activity through a permanent establishment in Romania;
- c) non-resident individuals who carry out dependent activities in Romania;
- d) non-resident natural persons who obtain incomes provided in art. 129.

ART. 61 - Income categories subject to income tax

The categories of income subject to income tax, according to the provisions of this title, are the following:

- a) incomes from independent activities, defined according to art. 67;
- a1) incomes from intellectual property rights, defined according to art. 70;
- b) incomes from salaries and assimilated to salaries, defined according to art. 76;
- c) incomes from the transfer of the use of the goods, defined according to art. 83;
- d) income from investments, defined according to art. 91;
- e) income from pensions, defined according to art. 99;
- f) incomes from agricultural activities, forestry and fish farming, defined according to art. 103;
- g) incomes from prizes and games of chance, defined according to art. 108;
- h) incomes from the transfer of real estate properties, defined according to art. 111;
- i) incomes from other sources, defined according to art. 114 and 117.”

The non-taxable incomes are those provided in art. 62 of the fiscal code.

“ART. 64 - Tax rates

1. The tax rate shall be 10% and shall apply to the taxable income corresponding to each sources in each category for determining income tax from:

- a) independent activities;
- a1) intellectual property rights;
- b) salaries and assimilated to salaries;
- c) assignment of the use of the goods;
- d) investments;
- e) pensions;
- f) agricultural activities, forestry and fish farming;
- g) awards; “

The income categories subject to income tax benefit from certain deductions, specific to each income category and according to which the taxable income, income tax and implicitly the net income are determined. Since each income category has a specific calculation method, we will not detail here and we will limit ourselves only to the assessment that the provisions of the fiscal code, Title IV are incidents. It is very clear that any accounting specialist must know these provisions and know how to apply them properly.

4. Mandatory Social Contributions

“ART. 135 - The scope of social contributions

For the purposes of this title, the social contributions defined in art. 2 (paragraph (2)) are compulsory social contributions:

(2) The compulsory social contributions regulated by this code are the following:

- a) social insurance contributions, due to the state social insurance budget;
- b) the social health insurance contribution, due to the budget of the Single National Fund of social health insurance;
- c) the insurance contribution for work, due to the general consolidated budget.

ART. 138 - Social insurance contribution rates

The social security contribution rates are as follows:

- a) 25% due by natural persons who have the quality of employees or for whom they exist the obligation to pay the social insurance contribution, according to this law;

b) 4% due in case of special working conditions, as provided in Law no. 263/2010 on the unitary public pension system, with subsequent amendments and completions, by to natural and legal persons who have the status of employers or are assimilated to them;

c) 8% due in case of special working conditions, as provided in Law no. 263/2010, by natural and legal persons who have the quality of employers or are assimilated them.

ART. 138.1 - Special provisions for the field of constructions

(1) In the period January 1, 2019 - December 31, 2028 inclusive, for individuals who realizes incomes from salaries and assimilated to the salaries realized on the basis of the individual contracts of work with employers working in the construction sector and who falls under the conditions provided in art. 60 point 5, the share of the provided social insurance contribution the art. 138 lit. a) is reduced by 3.75 percentage points.

(2) The persons provided in par. (1) which owes the contribution to the administered pension fund privately regulated by Law no. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, are exempt from payment of this contribution in the limit of the quota provided in par. (1).

(3) The provisions of par. (1) and (2) shall apply according to the instructions to the joint order of the Minister public finances, the Minister of Labor, Family, Social Protection and the Elderly and al the Minister of Health, provided in art. 147 para. (17) .”

The incomes provided in art.141 C.F. are exempted from the payment of social insurance contributions.

“ART. 153 - Taxpayers / Payers came at the level of social insurance of health

(1) The following persons have the quality of contributions / income payers at the level of social health insurance, in compliance with the provisions of the European legislation applicable in in the field of social security, as well as agreements on the social security system at to which Romania is a party, as the case may be:

a) Romanian citizens domiciled or residing in Romania;

b) foreign citizens and stateless persons care and requests and information extension of the right of residence temporary or domiciled in Romania;

“ART. 153 - Taxpayers / Payers came at the level of social insurance of health

(1) The following persons have the quality of contributions / income payers at the level of social health insurance, in compliance with the provisions of the European legislation applicable in the field of social security, as well as agreements on the social security system at to which Romania is a party, as the case may be:

- a) Romanian citizens domiciled or residing in Romania;
- b) foreign citizens and stateless persons care and requests and information extension of the right of residence temporary or domiciled in Romania;
- c) citizens of the Member States of the European Union, the European Economic Area and of The Swiss Confederation may not allow or ensure the accompaniment of the high territory the care of the Member State Production of the Romanian territory, care and request and use of information about a station in Romania for a period of more than 3 months;
- d) persons who are members of the European Union, the European Economic Area and The Swiss Confederation care meets the conditions of border works and carries out employed or self-employed in Romania and care resides in another Member State in the care of the regulatory delay daily or at least now can increase;
- e) *** REPEALED ***
- f) natural persons and legal care and the quality of employers or are assimilated to things;

(2) The persons are at par. (1) lit. a) - d), care to insure or insurance for illness and maternity leave on the basis of social security in another Member State of the European Union, Space European European and the Swiss Confederation or in terms of care Romania are divided bilateral social security agreements with provisions for maternity sickness insurance, in based on domestic legislation in a statiler, care then produces the territory of Romania and the face proof of the validity of the insurance, if it can be established by the common order of to the President of the A.N.A.F. and in the case of the National Health Insurance House, they do not have the quality of contributes to the use of social health insurance.

In order to be correctly framed and calculate the contribution to health, you must take into account the categories of care people are except for the contribution of social health insurance. These exceptions are provided in art. 154 of the fiscal code.

“ART. 155 - Income categories subject to social security contributions health: (1) The taxpayers to the social health insurance system, provided in art. 153 para. (1) lit.

a) - d), owes, as the case may be, the social health insurance contribution for the income from Romania and outside Romania, in compliance with the applicable European legislation in the field social security, as well as agreements on social security systems in which Romania is a party, for which there is the obligation to declare in Romania, made from the following categories income:

- a) incomes from salaries and assimilated to salaries, defined according to art. 76;
- b) incomes from independent activities, defined according to art. 67;
- c) incomes from intellectual property rights, defined according to art. 70;
- d) incomes from the association with a legal person, taxpayer according to titles II, III or Law no. 170/2016, for which the provisions of art. 125;
- e) incomes from the transfer of the use of the goods, defined according to art. 83;
- f) incomes from agricultural activities, forestry and fish farming, defined according to art. 103;
- g) income from investments, defined according to art. 91;
- h) incomes from other sources, defined according to art. 114.

(2) For the incomes provided in par. (1) is due the social insurance contribution of health and if they are performed by natural persons in the situations provided the art. 60.

ART. 156 - Social health insurance contribution quota The share of social health insurance contribution is 10% and is due by natural persons who have the quality of employees or for whom there is an obligation to pay the contribution of social health insurance, according to this law.

ART. 168 - Establishment and payment of the social health insurance contribution

(1) Natural and legal persons who have the quality of employers or are assimilated to them have the obligation to calculate and withhold the social health insurance contribution due by individuals who obtain income from salaries or assimilated to salaries.

(2) The provisions of par. (1) shall also apply in the case of natural persons performing in Romania income from salaries or assimilated to salaries from employers in states not covered applicable European legislation in the field of social security and agreements on social security systems social security to which Romania is a party.

(3) The social health insurance contribution calculated and withheld according to par. (1) is paid until the 25th of the month following the month for which the income is paid or until the 25th day of the month following the quarter for which it is due, as the case may be, according to the law.

ART. 169 - Submission of declarations

(1) The following categories of persons are obliged to submit monthly, until the 25th including the month following the month for which the income is paid, the declaration provided in art. 147 par. (1):

a) natural and legal persons who have the quality of employers or persons assimilated to them;

b) the persons who realize in Romania incomes from salaries or assimilated to the salaries from employers in countries not covered by applicable European legislation in the field social security, as well as agreements on social security systems in which Romania this part;

c) public institutions and other entities that pay rights of the nature of those mentioned in art. 168 par. (7), (71) and (10), relating to the periods when the social health insurance contribution was borne, according to law, by these institutions or by the beneficiaries of income, as the case may be;

(2) *** REPEALED ***

(3) If amounts representing salaries / balances or differences of salaries / balances established on the basis of final and irrevocable court decisions / judgments final and enforceable judgments, as well as if such decisions have been ordered re-employment of certain persons, social health insurance contributions due according to the law, it is declared until the 25th of the month following the month in which they were paid amounts, by submitting corrective statements for the months to which the amounts relate concerned.

(31) The provisions of par. (3) shall also apply in the case of amounts representing salaries / balances or differences of salaries / balances established by law, granted for previous periods.

(32) If amounts of the nature provided in art. 168 para. (7), (71) and (10), for the periods when the social health insurance contribution was borne, accordingly by law, by these institutions or by the beneficiaries of income, as the case may be, insurance contributions. The health benefits due are declared by the 25th of the month following

that in which they were paid these amounts by submitting the declaration provided in par. (1).

(4) The provisions of art. 147 para. (4) - (22) are applicable accordingly.

Insurance Contribution for Work

ART. 2201 - Taxpayers who owe the insurance contribution for the work The taxpayers obliged to pay the employment insurance contribution are, as the case may be:

a) natural and legal persons who have the status of employers or are assimilated to them, for Romanian citizens, citizens of other states or stateless persons, for the period in which they have, according to the law, domicile or residence in Romania, in compliance with the provisions of the European legislation applicable in in the field of social security, as well as agreements on social security systems in which Romania is a party;

b) natural persons Romanian citizens, citizens of other states or stateless persons, during the period in which they have, according to the law, domicile or residence in Romania, and who realizes in Romania income from salaries or assimilated to salaries from employers in countries not covered by European law applicable in the field of social security as well as agreements on security systems social sector to which Romania is a party.

ART. 2202 - Categories of income for which the insurance contribution for work is due:

(1) The insurance contribution for work is due for income from salaries and similar salaries, defined in art. 76 para. (1) - (3), as the case may be, granted by the taxpayers provided in art. 2201 lit. a), respectively made by the natural persons provided in art. 2201 lit. b).

(2) For the incomes provided in par. (1) is due the insurance contribution for work and in case they are made by the natural persons in the situations provided in art. 60.

ART. 2203 - The share of the insurance contribution for work (1) The share of the insurance contribution for work is 2.25%.

(2) By exception from the provisions of par. (1), between January 1, 2019 - December 31, 2028 including, the share of the insurance contribution for work is reduced to the level of the share that is made income at The guarantee fund for the

payment of salary claims established on the basis of Law no. 200/2006 regarding establishment and use of the Guarantee Fund for the payment of salary claims, as amended in the case of employers working in the construction sector and who are falls under the conditions provided in art. 6 point 5.

5. Taxes on Incomes Obtained in Romania by Non-Residents and Taxes on Representatives of Foreign Companies Established in Romania

Income tax obtained from Romania by non-residents

ART. 221 - Taxpayers

Non-residents who obtain taxable income from Romania have the obligation to pay tax according to this chapter and are hereinafter referred to as taxpayers.

ART. 222 - The scope of the tax

The tax established by this chapter, hereinafter referred to as income tax from Romania by non-residents, applies to the gross taxable income obtained from Romania

ART. 224 - Withholding tax from taxable income obtained from Romania by non-residents

(1) The tax due by non-residents for the taxable income obtained from Romania shall be it is calculated, withheld, declared and paid to the state budget by the income payers. The withheld tax is declared until the term of its payment to the state budget.

(2) By exception from the provisions of par. (1), the tax due by non-residents, members in the fiscal transparent association / entity, which operates in Romania, for revenues taxable income obtained from Romania, shall be calculated, withheld, paid to the state budget and declares by the person designated within the fiscal transparent association/ entity, provided at art. 233 and art. 234 para. (1). Withholding tax does not apply to non-resident taxpayers a whose activity within the fiscal transparent association/ entity generates a permanent establishment in Romania.

(3) The payment of an income shall mean the fulfillment of the obligation to make funds available to the creditor in the manner established by contract or other agreements agreed between the parties lead to the settlement of contractual obligations.

(4) The tax due shall be calculated by applying the following quotas on gross income:

a) - *** REPEALED ***

b) 5% for the income from dividends provided in art. 223 para. (1) lit. a);

c) 50% for the incomes provided in art. 223 para. (1) lit. b) - g), i), k), l) and o), if the income are paid into an account in a state with which Romania has not concluded a legal instrument in the basis on which to exchange information. These provisions apply only in the situation in which the incomes of the nature of those provided in art. 223 para. (1) lit. b) - g), i), k), l) and o) are paid as as a result of transactions qualified as artificial according to art. 11 para. (3);

d) 16% in the case of any other taxable income obtained from Romania, as they are listed in art. 223 para. (1).

(5) The tax is calculated, respectively withheld at the time of payment of income, is declared and pays to the state budget by the 25th of the month following the month in which it was paid income. The tax is calculated, withheld, declared and paid, in lei, to the state budget, to the exchange rate of the foreign exchange market communicated by the National Bank of Romania, for the day when income is paid to non-residents. In the case of dividends distributed, but which were not paid to shareholders or associates by the end of the year in which the financial statements were approved the annual dividend tax shall be declared and paid by 25 January of the year next, respectively until the 25th of the first month of the modified fiscal year, following the year in which the annual financial statements have been approved, as appropriate. Tax is not calculated, withheld or deducted pays to the state budget for dividends distributed and unpaid until the end of the year in which the annual financial statements have been approved, whether on the last day of the calendar year or on the last day of modified fiscal year, as the case may be, the foreign legal entity benefiting from the dividends fulfills the conditions provided in art. 229 para. (1) lit. c).

(6) For interest income on demand deposits / current accounts, at time deposits, certificates of deposit and other savings instruments with banks and others credit institutions authorized and located in Romania, the tax is calculated and withheld by the payers of such income at the time of registration in the current account or in the deposit account of to the holder, respectively at the time of redemption, in the case of certificates of deposit and al saving tools. Payment and tax return for interest income are made monthly, until the 25th of the month following the month of registration/ redemption.

(7) The renewal of deposits / saving instruments will be assimilated with the establishment of a new deposit / purchase of a new savings instrument.

(8) The tax on capitalized interest shall be calculated by the payer of such income in the moment of registration in the current account or in the holding account of the holder, respectively in the time of redemption in the case of savings instruments or when the interest is converted into a loan or capital, as the case may be.

(9) For any income the tax to be withheld in accordance with this Chapter shall be final tax.

Regarding the representative tax:

Representation Tax

ART. 235 - Taxpayers

Representation of a foreign legal entity (ies), authorized to operate in Romania, according to the law, he has the obligation to pay an annual tax, according to this chapter.

ART. 236 - Establishment of the tax

(1) The tax on representation for a fiscal year is 18,000 lei.

(2) In the case of representation of a foreign legal entity (ies), which is established or abolishes during a fiscal year, the tax due for this year is calculated proportionally with the number of months of existence of the representation in the respective fiscal year.

ART. 237 - Payment of tax and submission of tax return

(1) The representation of a foreign legal entity (ies) has the obligation to declare and pay the tax on representation in the state budget until the last day of February inclusive taxation.

(2) Representation of a foreign legal entities established in Romania during a month from the taxation year has the obligation to calculate, to submit the tax return to the tax authority competent authority and pay the tax for the taxation year, within 30 days from the date of which it was established. The tax is calculated starting with the 1st of the month in which it was established by the end of that year.

(3) The representation of a foreign legal entities abolished in Romania during the

year taxpayer has the obligation to recalculate the tax on representation and to file the tax return to the competent fiscal body within 30 days from the date on which it was abolished. The representative office recalculates the annual tax for the period of activity from the beginning of the year until the 1st of the month following the month in which it is abolished.

(4) The representations are obliged to keep the accounting records provided by the legislation in force in Romania.

6. Value Added Tax

“ART. 265 - Definition of value added tax Value added tax is an indirect tax due to the state budget and that is collected in accordance with the provisions of this title.

ART. 268 - Taxable operations

(1) From the point of view of the tax, there are taxable operations in Romania that cumulatively meet the following conditions:

a) the operations which, within the meaning of art. 270 - 272, constitute or are assimilated with a delivery of goods or a provision of services, in the sphere of tax, performed with payment;

b) the place of delivery of goods or provision of services is considered to be in Romania, in accordance with the provisions of art. 275 and 278;

c) the delivery of the goods or the provision of the services is performed by a taxable person, thus as defined in art. 269 para. (1), acting as such;

d) the delivery of goods or the provision of services to result from one of the economic activities provided in art. 269 para. (2).

(2) It is also a taxable transaction and the import of goods carried out in Romania by any person, if the place of import is in Romania, according to art. 277. (3) There are also taxable transactions and subsequent payment transactions, for which the place is considered to be in Romania, according to art. 276

Operations within the Scope of the Tax

ART. 270 - Delivery of goods

ART. 271 - Provision of services

1. Any operation which does not constitute a supply of goods shall be deemed to be the supply of services as defined in art. 270.

(4) The following are assimilated to the provision of paid services:

a) the use of goods, other than capital goods, which are part of the assets used in within the economic activity of the taxable person for his own benefit or by the staff or to be made available for free use to others, for purposes other than the conduct of its economic activity, if the tax on goods respectively has been deducted in whole or in part, except for the goods the acquisition of which is the subject limitation to 50% of the right of deduction according to the provisions of art. 298;

b) services provided free of charge by a taxable person for his or her own or his staff's use or for the use of other persons, for purposes other than its economic activity.

(5) It does not constitute the provision of services performed with payment within the meaning of par. (4), not limited to these operations such as:

a) the use of goods that are part of the assets used in the economic activity a the taxable person or the provision of services free of charge in sponsorship proceedings, patronage or protocol, under the conditions established by the methodological norms; b) services provided free of charge for the purpose of advertising or for the purpose of stimulating sales or, more generally, for purposes related to the pursuit of economic activity, under the conditions established by methodological norms;

c) services provided free of charge during the warranty period by the person who a initially carried out the delivery of goods or the provision of services.

(6) The provisions of art. 270 para. (5) and (7) shall apply accordingly to the provision of services.

ART. 272- Exchange of goods or services

In the case of an operation involving the delivery of goods and / or the provision of services in the exchange of a supply of goods and / or services, each taxable person is considered that he has made a delivery of goods and / or the provision of paid services.

ART. 273- Intra-community acquisitions of goods

1. The acquisition of the right to dispose, as an owner, of tangible movable property dispatched or transported to the destination indicated by it shall be considered an intra-Community acquisition of goods.buyer, by the supplier, by the buyer or by another person, in the account the supplier or the buyer, to a Member State other than

the Member State of departure or shipping the goods.

ART. 274- Import of goods

The import of goods represents:

a) the entry into the territory of the European Union of goods that are not in free circulation in the meaning of art. 29 of the Treaty on the Functioning of the European Union;

b) in addition to the operations provided in let. a) the entry into the European Union of goods in free circulation, originating in a third territory, which is part of the customs territory of the European Union.

ART. 280 - The generating fact and the exigibility - definitions

(1) The generating fact represents the fact by which the legal conditions necessary for the exigibility of the tax are fulfilled.

(2) The chargeability of the tax represents the date on which the tax authority becomes entitled, on the basis law, to demand payment by the persons obliged to pay the tax, even if the payment of this tax can be postponed.

(3) The chargeability of payment of the tax is the date on which a person is obliged to pay the tax at the state budget, according to the provisions of art. 326 para. (1).

(4) The tax regime applicable to taxable transactions is the regime in force on the date on which the generating fact occurs, except for the cases provided in art. 282 para. (2), for which applies to the tax regime in force on the date on which the tax becomes chargeable.

ART. 281 - The generating fact for deliveries of goods and services

(1) The generating fact occurs on the date of delivery of the goods or on the date of provision of the services, in accordance with the rules laid down in this Article.

ART. 282 - Chargeability for deliveries of goods and services

(1) The exigibility of the tax occurs on the date on which the generating fact takes place.

(2) By exception from the provisions of par. (1), the chargeability of the tax occurs:

a) on the date of issuing an invoice, before the date on which the generating fact occurs;

b) on the date on which the advance is collected, for advance payments made before

the date on which the operative event occurs. Advances represent the partial or full payment of value of goods and services, performed before the date of their delivery or provision;

c) on the date of cash extraction, for the deliveries of goods or the provision of services performed by vending machines, games or other similar machines.

(3) By exception from the provisions of par. (1) and para. (2) lit. a), the chargeability of the tax occurs on the date of collection of the full or partial value of the delivery of goods or provision of services, in case taxable persons who opt for this purpose, hereinafter referred to as the persons who apply VAT collection system.

ART. 291 - Quotas

(1). The standard rate shall apply to the taxable amount for taxable transactions which are not exempt from tax or which are not subject to reduced rates and the level of which is:

a) 20% starting with January 1, 2016 and until December 31, 2016;

b) 19% starting with January 1, 2017.

(2). The reduced rate of 9% shall be applied to the tax base for the following benefits services and / or supplies of goods

3. The reduced rate of 5% shall apply to the taxable amount for the following supplies of goods and services:

a) textbooks, books, newspapers and magazines, except for those intended exclusively or mainly advertising;

b) services consisting in allowing access to castles, museums, memorial houses, historical monuments, architectural and archaeological monuments, zoos and botanical gardens, fairs, amusement parks and amusement parks whose activities are classified under CANE codes 9321 and 9329, according to Classification of activities in the national economy - CANE, updated by the Order the president of the National Institute of Statistics no. 337/2007, fairs, exhibitions and events cultural events, sports events, cinemas, other than those exempted according to art. 292 para. (1) lit. m);

c) the delivery of housing as part of social policy, including the land on which they are built. The land on which the house is built also includes the footprint of the house .

ART. 321 - Evidence of operations

(1) The taxable persons established in Romania must keep correct and complete records of all operations carried out in the course of their economic activity.

ART. 322 - Fiscal period

(1) The fiscal period is the calendar month.

(2) By exception from the provisions of par. (1), the fiscal period is the calendar quarter for the taxable person who during the previous calendar year achieved a turnover of taxable and / or exempt operations with the right of deduction and / or non-taxable in Romania according to art. 275 and 278, but which give the right of deduction according to art. 297 para. (4) lit. b), which did not exceed the ceiling of 100,000 euros whose equivalent in lei is calculated according to the methodological norms, unless the taxable person has performed during the calendar year previous one or more intra-Community acquisitions of goods.

ART. 323 - Tax return

(1) The persons registered according to art. 316 must submit to the competent tax authorities, for each fiscal period, a tax return, until the 25th of the following month inclusive the one in which the respective fiscal period ends.

(2) The tax return prepared by the persons registered according to art. 316 will include the amount the deductible tax for which the right to deduct arises during the reporting tax period and, as the case may be, the amount of the tax for which the right of deduction is exercised, under the conditions provided in art. 301 para. (2), the amount of tax collected whose chargeability arises during the reporting tax period and, as the case may be, the amount of tax collected which was not entered in the statement of the tax period in which it was taken the exigibility of the tax, as well as other information provided in the model established by the Ministry Public Finance.

(3) The data incorrectly entered in a tax return may be corrected by the statement of a period subsequent fiscal years and will be included in the regularization lines.

7. Excise Duties and Other Taxes

“ART. 335 - Scope of application

(1) Harmonized excise duties are revenues due to the state budget and collected accordingly the provisions of this chapter.

2. Harmonized excise duties, hereinafter referred to as excise duties, are special duties levied directly or indirectly on the consumption of the following products:

- a) alcohol and alcoholic beverages referred to in section 4;
- b) processed tobacco provided for in section 5;
- c) energy products and electricity provided for in sections 6 and 7.

ART. 338 - The generating fact

Excisable products are subject to excise duty at the time:

- a) their production, including, where applicable, at the time of their extraction, on the territory of the European Union;
- b) their import on the territory of the European Union.

ART. 339 - Enforceability

1. Excise duty shall become chargeable at the time of release for consumption and in the Member State in which release for consumption is made.
2. The conditions of chargeability and the level of excise duty applicable shall be those in force on the date on which excise duty becomes chargeable in the Member State in which the release for consumption takes place.

ART. 340 - Release for consumption

1. For the purposes of this Chapter, release for consumption means:

- a) the exit of excisable products, including irregular ones, from an excise duty suspension regime;
- b) possession of excisable products outside a suspensive excise regime for which excise duties were not collected in accordance with the provisions of this chapter;
- c) the production of excisable products, including irregular ones, outside a suspensive regime of excise duties;
- d) the importation of excisable products, including irregularly, unless excisable products are placed, immediately after import, under excise duty suspension;
- e) the use of excisable products inside the fiscal warehouse other than as material first.

ART. 343 - Calculation of excise duties

(1) The calculation of excises is performed according to the provisions of the methodological norms.

(2) For cigarettes, the excise duty due is equal to the sum of the specific excise duty and the excise duty ad valorem.

(6) The excise due determined according to par. (2) may not be lower than the level of excise duty minimum expressed in lei / 1,000 cigarettes which is 97% of the level of the total excise duty provided in annex no. 1.

ART. 344 - Responsibilities of excise payers

(1). Excise payers shall be required to register with the competent authority.

(2) Any excise payer shall be liable for the correct calculation and payment on time of excise duties to the state budget and for the timely submission of declarations of excise duties to the competent authority, in accordance with the provisions of this chapter.

ART. 345 - Payment of excises to the state budget

(1). The period for payment of excise duty shall be up to and including the 25th of the month following that in which the excise duty becomes chargeable, except where expressly provided for in another payment period.

(2) By exception from the provisions of par. (1):

a) In the case of authorized suppliers of electricity or natural gas, the payment term a excise duty is until the 25th of the month following the month in which the invoicing to the final consumer. In the case provided in art. 358 para. (3), the term of payment of excise duties is up to the date of the 25th of the month following the month in which the self-consumption took place;

b) In the case of the importation of an excisable product, which is not placed under a suspensive procedure, the time of payment of excise duty is the time of registration of the import customs declaration;

c) any person in one of the situations provided in art. 340 para. (4) - (7) has the obligation to pay the excise duties within 5 days from the date on which they became due; d) in the situations provided in art. 340 para. (1) lit. b) and c) the excise duty is paid on the working day immediately following the one in which the excise declaration was lodged.

(3) Delivery of energy products provided in art. 355 para. (3) lit. a) - e) from fiscal warehouses or from the location where they were received by the registered consignee shall be made only when the supplier has the payment document certifying the transfer to the state budget of the value of excise duties related to the quantity to be invoiced. On the occasion of the submission the monthly excise declaration shall regularize any differences between the value of the excise duty transferred to the state budget by the beneficiaries of the products, on behalf of the fiscal warehouse or of the registered consignee, and the amount of excise duty related to the quantities of energy products actually delivered by them during the previous month.

ART. 346 - Submission of excise declarations

(1). Any payer of excise duty, with the exception of the authorized importer, shall be required to submit a monthly declaration of excise duty to the competent authority, whether or not the payment is due excise duty for that month.

(2). Excise declarations shall be lodged with the competent authority by the excise payers by the 25th of the month following the month to which the declaration relates.

(3) By exception from the provisions of par. (2), any person in one of the situations provided in art. 340 para. (1) lit. b) and c) and art. 340 para. (4) - (7) has the obligation to submit a declaration of excise duty to the competent authority within 5 calendar days from the date release for consumption.

(4) Any payer of excise duties has the obligation to submit annually to the competent authority the excise tax return, according to the legal provisions on the payment obligations to the state budget, until April 30 of the year following the reporting year.

ART. 347 - Fiscal documents

For excisable products that are transported or held outside the warehouse

fiscal, the provenance must be proven according to the provisions established by the rules Methodological.

Non-Harmonized Excise Regime

ART. 439 - Scope of application

(1) Non-harmonized excise duties are revenues due to the state budget and collected according to the provisions of this chapter.

(2) Non-harmonized excise duties are special duties levied on the following

products:

a) heated tobacco products which, by heating, emit an aerosol which can be inhaled, without the combustion of the tobacco mixture taking place, with tariff heading NC 2403 99 90;

b) liquids containing nicotine intended for inhalation by means of an electronic device of the “Electronic cigarette” type, falling within tariff heading CN 3824 90 96. ART. 440 - The generating fact

The excisable products provided in art. 439 are subject to excise duty at the time of production, intra-Community acquisition or importation into the territory of the Community.

ART. 442 - Level and calculation of excise duties

(1) The level of excise duties for the products provided in art. 439 is the one provided in annex no. 2, which is an integral part of this title, and applies from 1 January 2016. For years the level of excise duty applicable from 1 January of each year is the level updated calculated according to par. (2).

(2) The level of excise duties provided in annex no. 2 is updated annually with the increase of prices of consumption in the last 12 months, calculated in September of the year preceding the application, face from October 2014 to September 2015, officially communicated by the National Institute of Statistics until October 15. The updated level of excise duties is published on the website Ministry of Public Finance by October 20 of each year at the latest.

(3) The provisions of par. (2) shall not apply if the decrease has taken place in the last 12 months consumer prices, calculated in September of the year preceding the application, compared to October 2014 - September 2015, officially communicated by the National Institute of Statistics until October 15.

(4) For the products provided in art. 439 excise duties are due only once and are calculated by applying the fixed amounts per unit of measurement to the quantities produced and marketed, imported or purchased intra-Community, as the case may be.

ART. 445 - Obligations of payers The economic operators paying excise duties provided in art. 444 are obliged:

a) to register as excise payers at the competent fiscal authority;

b) to calculate the excises, to highlight them separately in the invoice and to pay

them to the state budget at the established deadlines, being responsible for the accuracy of the calculation and the full payment of the amounts due;

c) to keep records of excise duties, according to the provisions of the methodological norms, and to submit annual excise duty returns, in accordance with the legal provisions on payment obligations, at the state budget, until April 30 of the year following the reporting year.

ART. 446 - Excise declarations The excise payers provided in art. 444, with the exception of importers, are required to submit to the competent authority a declaration of excise duty for each month, regardless of whether it is due or not to pay the excise duty for that month, until the 25th of the month following the month of which refers to the statement.

ART. 447 - The term for paying the excises to the state budget

(1) For the situations provided in art. 441 lit. a) and c), the term of payment of excise duties is up to the 25th of the month following the month in which the excise duty becomes chargeable.

(2) For the situations provided in art. 441 lit. b), the payment of excise duties is made on the due date excises.

8. Local Taxes and Fees

ART. 454 - Local taxes and fees Local taxes and fees are as follows:

- a) the building tax and the building tax;
- b) land tax and land tax;
- c) the tax on means of transport;
- d) the fee for issuing certificates, approvals and authorizations;
- e) the fee for the use of means of advertising;
- f) the performance tax;
- g) special taxes;
- h) other local taxes.

9. Construction Tax

ART. 496 - Taxpayers

(1) They are liable to pay the construction tax established in accordance with this Title, the following persons, hereinafter referred to as taxpayers:

- a) Romanian legal entities, except for public institutions, national institutes of research and development, associations, foundations and other non-profit legal entities, according to the laws of organization and functioning;
- b) foreign legal entities that carry out activity through a permanent establishment in Romania;
- c) legal entities with their registered office in Romania established according to European legislation.

(2) In the case of financial leasing operations, the user is the taxpayer, and in the case of operational leasing operations, the lessor is the taxpayer.

ART. 497 - Definition of constructions For the purposes of this title, constructions are those provided for in group 1 of the Catalog on the classification and normal operating times of fixed assets.

ART. 498 - Tax rate and taxable base 1. The construction tax shall be calculated by applying a rate of 1% to the amount existing constructions in the taxpayers' patrimony on December 31 of the previous year, recorded in the accounts in the debit balance of the accounts corresponding to the constructions referred to in art. 497, minus:

- a) the value of the buildings, for which a building tax is due, according to the provisions of the title IX. These provisions also include the value of buildings in industrial, science and parks technological which, according to the law, does not benefit from the exemption from the payment of the building tax;
- b) the value of the reconstruction, modernization, consolidation, modification or extension works at rented constructions, taken into administration or in use;
- c) the value of constructions and reconstruction, modernization, consolidation, modification works or extension of buildings, located or to be passed, in accordance with the legal provisions in force, owned by the state or the administrative-territorial units;
- d) the value of the constructions from subgroup 1.2 "Agricultural constructions"

from the Catalog regarding classification and normal operating times of fixed assets;

e) the value of constructions located outside the state border of Romania, as it is defined according to the law, including those located in the contiguous area of Romania and the exclusive economic area of Romania, as delimited by Law no. 17/1990 regarding the legal regime of waters inland waterways, the territorial sea, the contiguous zone and the exclusive economic zone of Romania, republished, for the operations related to the activities carried out in the exercise the rights provided by art. 56 and 77 of the United Nations Convention on the Law of the Sea, concluded at Montego Bay (Jamaica) on December 10, 1982, ratified by Romania by Law no.110/1996;

f) the value of the constructions in the public domain of the state and which are part of the material base of representation and protocol, as well as those in the public and private domain of the state, rented or data for use in public institutions, constructions administered by the Autonomous Administration “Administration

State Protocol Heritage

g) the value of the constructions owned by the sports structures, defined according to the law.

(2) In the event that, during the current year, increase operations are registered or decrease of the value of the debit balance of the accounts corresponding to the constructions mentioned in art.497, the construction tax calculated according to par. (1) is not recalculated. These changes are taken into account for determining the construction tax due for the following year.

(3) The expense with the tax calculated according to par. (1) is an deductible expense upon establishment the fiscal result regulated by Title II.

ART. 499 - Payment of tax and submission of tax return

(1) The taxpayers provided in art. 496 are required to calculate and declare the tax on construction, until May 25 inclusive of the year for which the tax is due.

(2) The construction tax, declared according to par. (1), shall be paid in two equal installments, up to dates of May 25 and September 25 inclusive.

(3) By exception from par. (1) and (2), taxpayers who cease to exist during the year have the obligation to declare and pay the tax determined according to art. 498 para. (1), to date the end of the period of the year in which the legal person existed. (4) The newly established taxpayers owe the construction tax starting with the fiscal

year following.

(5) The model and content of the construction tax return shall be established by order of the president of the National Agency for Fiscal Administration.

(6) The tax regulated by this title represents revenue of the state budget and is administered by the National Agency for Fiscal Administration, according to the provisions of the Code of fiscal procedure.”

The application of the fiscal code is made according to the fiscal procedure code and its application norms.

The fiscal audit consists in collecting audit evidence regarding the situations that include fiscal information (fiscal declarations, VAT returns, excises, payroll, etc.), their centralization and analysis in order to verify their compliance and legality by a financial auditor. , competent and independent.

Fiscal audit evidence is the information that the auditor obtains and on the basis of which he will formulate his audit opinion.

These samples have as generating sources, the primary documents as well as the accounting records. They represent the result between the control tests and the procedures background.

About the substantive procedures we can say that they are those tests that the auditor performs to obtain audit evidence, with the ultimate goal of detecting errors in the financial statements.

These are detailed tests and analytical procedures. The audit is performed based on the audit contract assumed by the two parties, the confidentiality commitment given by the auditor and his declaration of independence.

Carrying out the audit presupposes that the financial auditor is free from any interest incompatible with the principles of integrity, objectivity and independence. An important element in the audit activity is the calculation of the audit risk. **Audit risk** is the risk that the auditor attributes to an inadequate opinion when the financial statements contain material misstatement.

The inherent risk, control risk and non-detection risk will be determined.

The risks related to the general organization of the company will also be taken into account, respectively:

-absence of an internal audit department;

- insufficient control over activities and work points;
- non-occupation of certain positions with qualified specialized personnel;
- absence of administrative accounting procedures.

The basic principle of the audit commitment is the independence of the financial auditors. Relevant in this respect are the provisions of art. 21 of law 162 / 06.07.2017 published in the Official Gazette. nr.588 / 12.07.2017.

The fiscal audit mission, respectively the audit of the fiscal receivables and obligations of the entity is made on the basis of a general audit strategy and which assists the auditor in the process of elaborating the audit plan.

Once the audit mission is accepted, the audit plan will be constructed according to the provisions of the ISA 300 standard “Planning”.

Audit mission

The fiscal audit of the audited company is performed in accordance with the International Auditing Standards, the national Auditing Standards, the republished Accounting Law 82/1991, of the Regulation for the application of the Accounting Law, the General framework for drawing up and presenting the Financial Statements.

We distinguish three main stages of the auditor's activity:

1. The programming and planning stage - in which the financial auditor must have full freedom regarding the choice of strategies necessary for the audit commitment and to approach certain parts of the work.
2. The investigation stage, in which the auditor will introduce the appropriate strategies for each situation, without being constrained in any way.
3. The reporting stage, where the auditor's ability to make certain information public, which he considers useful to be known, must be free .

It may happens that certain information is not presented in a real way, properly, by some of the directors of the audited company, to its shareholders.

During the audit mission, the financial auditor verifies whether all taxes and fees due to the state budget, budgets and special funds, as well as local budgets, have been correctly recorded and reported in the related statements.

There is a well-defined circuit of highlighting, accounting and reporting these taxes and fees.

Example:

-payment statement-CAS / CASS / Income Tax / CAM-monthly checking balance-112 declaration-role sheet;

-Sales / purchases journals-VAT collected / deductible VAT / payments payable / recovered-monthly verification balance-VAT return 300-Informative declaration 394-role sheet;

-Decision of the GMS-Statement of payment of dividends-monthly balance of verification-statement 100-role sheet.

Of course, this circuit also includes payment operations, respectively collection of payment obligations / receivables with the state budget. The financial availability accounts, house and bank, treasury advances, settlement / receivables accounts with the state budget, etc. are subject to verifications. The financial auditor will also follow the creation of a control program to facilitate the formation of conclusions, opinion and recommendations.

The objectives pursued by the auditor within the audit mission, refer to the criteria based on which the values of the obligations are assessed, respectively:

a) reality:

-all taxes and duties highlighted in the entity's accounting are amounts due to it and are a result of the activity carried out by the entity;

- the tax bases are real and represent the equivalent value of the delivered goods and of the rendered services

-all taxes and duties were determined and accounted for according to the legal regulations in force;

b) their correct evaluation:

-all taxes are correctly calculated;

- all payments related to these taxes and duties are also correctly calculated;

- the tax bases and tax rates were correctly determined and calculated;

c) completeness:

- all taxes and duties due by the entity are related to the audited financial year and have been highlighted in the corresponding accounts;

- all taxes and duties were accounted for at the time of their realization;
- the exigibility of all taxes and fees arose at the moment of consuming the generating fact, ie at the moment of delivery of the goods, of the transfer of ownership or of the provision of the services.

In order to be able to fulfill the above mentioned objectives, the auditor will check both the balances of the incident accounts and their turnovers, following certain procedural steps.

The first verification is of a synthetic nature, in which the initial balances of taxes and fees due / receivable are reconciled with the final balances of the same taxes and duties. in the form of a table, in order to understand these variations, their structural changes as well as the fluctuations generating anomalies.

An important check, for the analysis of the level of each tax, is the situation of these debts at the end of the previous financial year, ie at the beginning of the current financial year-taking into account the principle of continuity of activity. exceeded, as well as the level of interests and their related penalties.

The analysis and verification of the way in which the taxes and fees were calculated is an essential stage. The documents regarding both the acquisitions of assets and those based on which they were alienated must be researched, as well as the possible tax deductions from which the entity benefited.

The auditor will also check the calculation method of the fiscal result and will reconstitute it in the situation in which he finds significant differences. These will be found in the explanatory notes, annexes to the balance sheet.

Of particular importance is the examination of VAT returns. They must be correctly prepared, according to the quotas specific to each type of operation, specified in the logs of the respective operations. VAT, checking the following:

- a) Correspondence (equality) between the turnover declared through VAT returns and the amounts included in the accounts of income and advances from customers.
- b) selects a sample of VAT returns, from which the December statement and verifies:
 - the declared base with the registers of sales, purchases, house and bank, as well as with the advances from clients;
 - accounting data registered in the declaration;
 - mathematical calculations;

-payment amount through VAT payment account;

-payment and the date of its execution with the payment order and the related account statement;

c) verifies if the balances of the VAT accounts (deductible and collected) are settled on December 31. If they are not settled, the auditor will verify the statement based on which the re-execution was performed;

d) in case of VAT refund requests, the refund requests will be verified regarding:

-receiving funds in the account statement

- the amounts reimbursed or being reimbursed if they were deducted from the following statements.

The auditor verifies the correct registration of the VAT related to the goods sold and/or the services provided, the undetected errors being able to lead to significant debts. based on the documents, the initial and final balances, passive or active, based on the payment of the amount due or the amount to be recovered.

The VAT returns are also verified from the point of view of their submission within the legal terms, also verifying the date of payment from the account statement.

It is of particular importance that the obligations and receivables are correctly presented.

The auditor will verify for this purpose the mathematical calculations, the legal quotas, the declared basis, the justification of the balance sheet accounts, the correct distribution of the respective operations on the accounts, as well as the payment of these fees. taxes or, in the case of receivables, their balance and component.

The auditor will conclude by presenting the actual conclusions, while ensuring that they have been properly read and received.

The financial auditor considering that the evidence he obtained during the fiscal audit mission are sufficient and reasonable and based on them can substantiate and support his audit opinion, will prepare the fiscal audit report of the fiscal audit mission of the audited entity.

The report will express the audit opinion on the audit of the audited entity's fees and taxes. This opinion may be:

1. A favorable or unqualified opinion. An unqualified opinion must be expressed when the auditor concludes that the financial statements present a true and fair view

(or present with fidelity, in all material respects), in accordance with the established general financial reporting framework. ;

2. Reserved opinion: A reserved opinion must be expressed when the auditor concludes that an unqualified opinion cannot be expressed, but that the effect of any disagreement with the management or limitation of the scope is not so significant and profound as to require an opinion to the contrary or a declaration of the impossibility of expressing an opinion.

3. Unfavorable or contrary opinion. A dissenting opinion must be expressed when the effect of a disagreement is so significant and profound for the financial statements that the auditor concludes that it is not appropriate to express a qualified opinion in order to present the incomplete or distorted nature of the financial statements. .

4. Impossibility to express an opinion. The impossibility to express an opinion must be declared when the possible effect of limiting the scope is so significant and comprehensive that the auditor has not been able to obtain sufficient appropriate audit evidence and therefore cannot express an opinion on the financial statements.

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