

Fiscal Treatment of Leasing Operations

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Abstract

Accounting organization of economic operations with regard to financial and operational leasing is achieved taking into consideration the specific aspect, among which we mention: calculation and recording of fixed assets depreciation concerned, transfer of the right of ownership, deductibility of interest expenses and those resulting from the exchange rate differences, taxation of profits and income achieved by non-residents in Romania, the generating factor and demand of the value added tax.

We deem it justified to be granted the due importance to the profit tax since this is the most subject to tax evasion due to the calculation modalities as well as the existence of exemptions, reductions, deductible expenses and the sufficiently high fiscal pressure exercised due to the 16% rate as compared to the real possibilities of the economic agents in Romania.

Key words: *deductibility, demand, lessor, lessee*

The leasing operations come under the incidence of the fiscal laws of our country regarding: the tax on profit, value added tax, tax on income achieved by non-residents in Romania and Customs duties.

According to IAS 17, the financial leasing operations are reflected as follows:

- the lessor (owner) recognizes in the balance sheets the goods held as immobilized liabilities;
- the lessee (lodger) recognizes in the balance sheet the financial leasing operations as assets and debts at the same time.

Thus, the lessor is the one who will account for the good as belonging to him, consequently recording it and deducting its depreciation expenses.

Legally, the attributes of ownership over these goods are transferred partially at the beginning of the leasing contract, being completed at its end.

Economically, the lessee benefits from a financial credit for the said immobilization, for which he does not possess, financing sources.

Fiscally, the operation is exempted from Customs duty, this being due only at the expiry of the contract, being calculated at the residual value of the object.

According to IAS 17, the operational leasing operations are reflected as follows:

- the lessor recognizes in the profit and loss account an income distributed linearly over the entire leasing period. The costs, depreciation included, made in order to obtain the leasing income represent expenses;

- the lessee recognizes in the profit and loss account an expense distributed linearly over the duration of the contract.
- In the case of such a contract, the lessor will keep the object in his records and the lessee will account and deduct the paid rent.

Legally, the lessee acquires only the utilization right over the object in question, as in any renting contract.

Economically and financially, the lessee will use an object, for which he does not possess financial resources, incurring an exploitation expense, a royalty (the rent).

Fiscally, operational leasing is exempted from Customs duty, this being due only at the expiry date of the contract and being calculated at the residual value of the object.

Leasing is the solution that allows the company to obtain, with a minimum of initial financial effort the full right of use over machines, installations and technological equipment that help the company improve its productivity and operating returns, which in turn leads to profit growth.

The growth of the private sector in Romania as well as the increase competition faced by private companies mean that financial resources must be managed much more carefully and directed towards as many industries as possible.

Thus, leasing has become a funding tool that more and more companies choose to use, and its advantages relative to other methods for the purchasing of fixed assets promote it as a major factor in the development of the entire economy.

Tax Management and Use of Import Facilities

When purchasing an asset through a leasing arrangement, a company may use the facilities granted by the law relating to the deduction of leasing payments, according to the nature of the leasing contract: depreciation, interest, insurance in the case of a financial leasing contract.

Also, if the purchased asset is imported into the country, it is exempt from any importation duties over the period of the leasing contract; all such duties are to be paid at the end of the leasing contract the tax base amounting to 20% of the value at which the asset entered the country.

Financial Resources Management

When applying an investment program, with a leasing solution the company can direct its own financial resources towards a simultaneous funding of several projects.

Also, by choosing the leasing option to fund the purchase of fixed assets, the company can save a lot on its own funds and use these savings to make investments into people training, marketing and advertisement etc.

Flexible Payment Schedules

When using a leasing arrangement, the company can negotiate the schedule of payments in accordance with the specific of its business and industry seasonality, thus being able to maintain a positive cash-flow position. At the same time, the leasing company can customize the guarantee arrangements according to the needs and situation of each client.

A Substitute for Bank Loans

More often than not, the procedures required for obtaining a leasing-system financing are much simpler and more accessible to a much wider range of clients than is the case when applying for a bank loan.

Tax on Profit

In the case of financial leasing the user (lessee) is treated as owner from the fiscal point of view, while in the case of operational leasing the financier (lessor) has this same quality. The depreciation of the object which forms the subject of a leasing contract is made by the user (lessee) in the case of financial leasing, and by the lessor (financier) in the case of operational leasing.

The expenses regarding depreciation of assets are deductible within the limit of the provisions of Law no. 15/1994 regarding depreciation of the immobilized capital in corporate and non-corporate assets, republished with the subsequent modifications and additions. In the case of financial leasing, the user deduces the depreciation and interest and in the case of operational leasing, the user deduces the rent.

The expenses with interest in the case of financial leasing operations are deductible up to:

- the level of reference interest rate of the National Bank of Romania for loans in lei;
- the level of EURIBOR interest rate plus two percentage points, for loans in euro;
- the level of LIBOR interest rate plus two percentage points, for loans in other currencies.

Regarded from this point of view, there is an urge for differentiation between the authorized financing leasing companies and the credit institutions. In the case of authorized institutions the interest expenses have the following treatment:

- the interest expenses are integrally deductible when the degree of indebtedness of the capital is less than one;
- in case the indebtedness degree is one and over, the interest expenses are deductible up to the level of the sum of amounts from interests plus 10% of the other income of the tax payer.

The expenses with interests remained non-deductible are reported to the following period under the same conditions, up to their integral deduction. The other income does not include: income from interest, income from differences of exchange rate, income recorded in accounts nos. 711, "Variation of stocks", 721, "Income from non-corporate immobilizations production", 722, "Income from corporate immobilizations production".

In the case of loans obtained from other entities than the authorized credit institutions, the value of the interest expenses exceeding the level of allowed deductibility is considered non-deductible, without being taken into calculation in the following period.

Value Added Tax

The leasing operations are subjected to the value added tax. The generating factor and the demand of the value added tax are born at the due terms of the rates provided for in contracts for leasing operations. Relevant here is the value added tax paid in case when the leasing company resides abroad. This is not included in the calculation basis of the financial leasing interest.

Tax on the Income Achieved by Non-Residents in Romania

The income obtained by non-residents under the form of financial leasing interest of operational leasing royalty (leasing rate) are taxed in Romania by retention at the source, according to the provisions of the agreements of avoidance of double taxation or the domestic legislation, as the case may be. In the case of operational leasing transactions concluded with non-residents, royalty means the benefit established by the parties or the entire rate of leasing if the contract does not identify the benefiting part. According to the Government Ordinance no. 83/Aug.

1998, regarding the taxation of income achieved in Romania by non-resident physical or legal entities, the taxes imposed while double taxation agreements lack are:

- 10% for interest;
- 15% for royalties.

Customs Duties

The mobile goods brought into the country by users based on leasing contracts concluded with foreign companies are circumscribed to the Customs regime of temporary admission throughout the duration of the leasing contract.

If the goods are brought into the country by leasing companies, Romanian legal entities, based on leasing contracts concluded with the users, Romanian physical or legal entities, then they circumscribe to the Customs regime of imports, with exemption from payment of the amounts for all import rights.

In the case of acquisition of goods at the expiry date of the contract, according to the user's option, the user must pay the Customs duty calculated at the residual value of the object from the moment of concluding the sales contract, which cannot be less than 20% of the object's admission value.

We mention that for certain goods acquired in leasing excess are also paid.

Fiscal Control on The Profit Tax

Due to a sparsely efficient organization of the fiscal apparatus in general and the one of control in particular, fiscal control on the profit tax has a limited character. The control organisms must know what needs to be pursued during the control as such and concentrate over these objectives because the taxation basis is the fundamental element in determining the profit tax (taking into consideration the fact that in Romania there is a unique rate).

Specific to financial leasing and operational leasing operations, the control organisms must consider the following aspects with significant implications with regard to the profit tax checking:

- observation of the maturity dates provided for in the leasing sales contracts in order to do the recording at the maturation of the amounts in income;
- verification of the mode of recording as expenses the rates for goods taken over by an operational leasing contract and the depreciations and interests in the case of financial leasing contracts;
- in the case of external leasing contracts there will be considered the non-deductibility of the income tax of non-residents, unrecorded and not retained at source;
- verification of the calculation and recording of exchange differences between the date of recording the liabilities and debts in currency and the collection date, that is, payment thereof. Thus it is intended that at the closing of the exercise, the differences of currency exchange are reflected in expenses or financial income, as the case may be.

By Law no. 99/1999, on certain measures to accelerate the economic reform, the legislative frame adopted important modifications to Government Ordinance no. 51/1997, approved and modified by Law no. 90/1998, regarding leasing operations and leasing companies.

Expected for a long time, especially by the leasing companies, the new regulations bring substantial improvement to the leasing operations regime. From the numerous modifications I will refer to those regarding the fiscal regime of leasing operations.

The fiscal regime (from the profit tax point of view) of the leasing operations should follow their accounting regime. As such, in the case of financial leasing operations, the deductible expense for the user should be represented by the depreciation for the used item and probably the expense with the interest, while in the case of operational leasing, the user will deduce (as in the past, based on the old regulations), the expense with the leasing installments.

The recording of taxable income related to leasing operations by lessor/financer should be made symmetrically with the regime of user expense deductibility. Question marks can be raised, however, with regard to the magnitude of deductible/taxable expenses/income, in case the entrance value of the item, the payments related to the leasing operations, respectively, are established in foreign currency (in the case of international leasing operations) or only reported to a certain foreign currency.

Another provision, of fiscal nature, is the one establishing expressly the deductibility of the item insurance expenses by the party obliged by the contract to pay such insurance premiums.

With regard to the Customs regime, the new regulations bring under the sign of equality the financial leasing and the operational leasing. Both types of leasing benefit from the Customs regime of temporary admission with total exoneration from the obligation to pay importation rights, including Customs guarantees.

Exemption from payment of importation rights is also enjoyed by mobile goods brought into the country by leasing companies, Romanian legal entities, to be leased to Romanian users. However, the Customs regimes in the two cases are not identical: the first is a temporary admission regime, while the second is a final importation regime. In spite of this, in both cases, when the item is bought, the user must pay the Customs duties at the residual value of the item, which will be no less than 20 percent of the entrance value thereof.

An important aspect related to the new accounting and fiscal regime of the leasing operations is the one providing the application of the new regulations in time.

Considering the constitutional principle according to which “the law provides only for the future, except for a more favorable penal law”, the new regime should be applied only to the leasing contracts concluded after the effective date of the provisions contained in Law no. 99/1999.

As such, the leasing contracts under way on the effective date of Law no. 99/1999 should remain subject to the accounting and fiscal regime in force prior to such date. In addition, a change of the accounting and fiscal regime of a leasing operation under way could create uncertainties and difficulties both to the user and the lessor/financer.

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Tratamentul fiscal al operațiunilor de leasing

Rezumat

Organizarea contabilă a operațiilor economice privind leasing-ul financiar și operațional se realizează ținându-se cont de aspectele specifice, printre care amintim: calculul și înregistrarea amortizării mijloacelor fixe în cauză, transferul dreptului de proprietate, deductibilitatea cheltuielilor cu dobânzile și a celor din diferențe de curs valutar, modalitatea de impunere a profitului și a veniturilor realizate de nerezidenți în România, faptul generator și exigibilitatea taxei pe valoare adăugată.

Considerăm că este justificat să se acorde importanța cuvenită impozitului pe profit deoarece acesta este cel mai supus evaziunii fiscale datorită modalității de calcul, precum și existenței de scutiri, reduceri, cheltuieli deductibile, dar și presiunii fiscale destul de ridicate exercitată datorită ratei de 16 % în comparație cu posibilitățile reale ale agenților economici din România.