

CONSIDERATIONS REGARDING THE TAX REGIME OF THE SPONSORSHIP AND PATRONAGE OPERATIONS

Assoc. Prof. Radu BUZIERNESCU, PhD
Assoc. Prof. Roxana NANU, PhD
University of Craiova

1. Introduction

In the beginning of our material, giving the fact that the tax law restricts awarding facilities for persons who sponsor and do patronage actions by respecting the legal conditions in order to accomplish these actions (we can find it in art. 21 paragraph 4 let.f) from the Tax Code which regulates the deduction from the tax on profit of the amounts representing sponsorships and/or patronage actions, the collocation "it makes sponsorships according to the Law 32/1994 regarding sponsorship", we consider appropriate to make a brief presentation the legal regimen of sponsorship and patronage as it results from the Law no. 32/1994, with the subsequent amendments and additions and the Order of the ministry of public finances no. 994/1994 regarding the approval of the instructions for applying the Law no. 32/1994.

So, in order to establish if a trading company which makes an action with free title or a liberality, it benefits of a favorable tax treatment, it is necessary to analyze if there are accomplished the conditions so that legal action be qualified as sponsorship or patronage.

For this purpose, even with the risk that our exposure to be considered scholastic, presenting each one of the legal actions (sponsorship and patronage) will comprise: definition, beneficiary categories, activity fields in which there can be made sponsorship/patronage actions, the object and the form conditions required for a valid conclusion.

Sponsorship is the legal act through two persons agree regarding the transfer of property right upon some assets or financial means, by a natural or legal person, named sponsor, in order to accomplish activities without gainful purpose, developed on the other side, the beneficiary of the sponsorship.

A beneficiary of a sponsorship can be:

1. any legal person without gainful purpose who develops in Romania or is to develop an activity in one of the fields: cultural, artistic, educational, education, scientific-fundamental and applied research, humanitarian, religious, charitable, sportive, of the protection of human's rights, medical-sanitary, of assistance and social services, of environment protection, social, communitary, of representing the professional associations, of maintenance, restoration, preservation and improving historical monuments;

2. institutions and public authorities, including specialty organisms of public administration, for activities developed in the fields from point 1;

3. shows or programs of television or radio organisms, as well as books or publishing from the fields defined in point 1;

4. any natural person residing in Romania whose activity in one of the fields stipulated in point 1 is recognized by a legal person without gainful purpose or by a public institution which activates in the field for which it is required the sponsorship.

Patronage is a liberality deed by which a natural or legal person, named

mecena, transfers without obligation of direct or indirect trade-off, his property right upon some assets or financial means to a natural person, as an philanthropic activity with humanitarian character, for developing some activities in the fields: cultural, artistic, medical-sanitary or scientific-fundamental and applied research.

Regarding the form in which each of these legal actions end, the law provides for the sponsorship contract the conclusion with the form of an act with private signature, while for the patronage act it is stipulated its conclusion in the authentic form.

The assets which make the object of the sponsorship are evaluated by the sponsorship contract, this way:

a) at the sale price of the sponsor, exclusive VAT, in case the assets are produced by this one;

b) at the buying price on the market, exclusive VAT, in case the assets are acquired in ordered to sponsor, a fact proved on the basis of the invoice.

c) at the value in custom of the assets received from abroad with the title of sponsorship, established according to legal provisions.

We consider appropriate to bring into discussion, the provisions of article 6 from the Law no. 32/1994, according to which, the tax facilities provided by the Law no. 32/1994 are not awarded in the case: reciprocal sponsorship between natural and legal persons; the sponsorship made by relatives or affinitives up to 4th grade including; sponsorship of a legal person without gainful purpose by another legal person who leads or controls direct the sponsored legal person.

Under the conditions in which, in this moment, the tax facilities of which take benefit the persons who realize actions of sponsorship or patronage are regulated by the tax code, it is made the question if the provisions of article 6 from the Law no. 32/1994, which, as we have shown, it is not applied anymore. While

we try to catch the will of the law giver during the editing of that text, we can think that it was wanted so that infringing the interdictions would attract the loss of tax facilities, regardless the normative act through which they are approved.

Since this text has practical applicability, at least from the sponsorship perspective of a legal person without gainful purpose (for example a foundation) by a trading company which has the quality of founder, in our opinion we consider that it is imposed so that the law giver's will would be edited specifically, either by the abrogation of that specific article, either through its amendment, in the way that, infringing the interdictions leads to the loss of the facilities regulated by the tax law.

2. Fiscal treatment of the sponsorship and patronage costs

In the following, we continue our exposure by presenting the tax treatment applicable to the actions of sponsorship and patronage because the aspects related to the interpretation of the regulations which can be qualified as being at least ambiguous of the Law no. 32/1994 don't make the object of our study.

It is known the fact that, starting with 1st of January 2004, along with the Tax Code being effective (Law no. 571/2003), the fiscal treatment of the sponsorship and/or patronage costs have modified in the way that, these are non deductible expenses to the calculation of the tax on profit, but the taxpayer benefits of a deduction from the tax on profit.

So, according to art. 21 paragraph 4let f from the Tax Code, the tax payers who make sponsorships and /or patronage actions, according to the provisions of the Law no. 32/1994 regarding sponsorship, with the subsequent amendments, and of the Law of libraries no. 334/2002, republished with the subsequent amendments and additions, as well as those who award

private grants, according to the law, remit from the debt tax on profit the afferent amounts, if the total of these costs cumulatively accomplishes the following conditions:

1) is in the limit of 3 to thousand from the turn-over;

2) does not exceed more than 20% of the owed tax on profit.

In those limits also frame the sponsorship costs of the public right libraries, with the purpose of building pubs, subsidies, technology acquirements of the information and specific documents, financing the training programs of the librarians, the exchange of specialists, of the specializing grants, of the participation to international congresses.

An example of calculation regarding the remittance from the owed tax on profit of the costs representing the sponsorship is regulated on point 49¹ from Title II from the Government's Decision no. 44/2004 for the approval of the methodological normative of application of the Tax Code, with the subsequent amendments and additions upon which we insist considering that the regulation is extremely clear.

It is appropriate to mention the fact that the definition of "turn-over" which is the basis for the calculation of the first limit we do not find it in the Tax Code, situation in which we see ourselves obliged to make use of the definition folded in the accounting regulations, respectively in point 38 paragraph 1 from the Order of the ministry of public finances no. 1752/2007, according to which, the net turn-over comprises the amounts which resulted from selling products and supplying services which subscribe in the current activity of the entity, after the deduction of the trading discounts and of the value added tax, as well as of other taxes directly related to the turn-over.

We insist on the fact that, only in the situation of a sponsorship or patronage made under the conditions made under the conditions of the Law no 32/1994 is allowed the deduction of the

expenses with the sponsorship/patronage from the tax on profit.

From practice it spread the idea that, analyzing an operation from the perspective of the conditions stipulated by the law in order to qualify as sponsorship or patronage, it is necessary to pay attention to the categories of people who can be beneficiaries of the sponsorship/patronage, of the fields of activity in which the beneficiaries develop their activity, as well as of the object of sponsorship/patronage.

From an accounting point of view, respecting the principle of independence of the exercise, the expense with VAT afferent to the overpass of the ceiling affects the financial exercise to which it makes reference, and in what concerns the collected VAT, that shall be stressed in the fiscal period when fiscal situations are filed. The registration of non-deductible costs shall be made in correspondence with the non-contingent VAT code, and in the period when the tax becomes contingent, it shall be put in the collected VAT account.

With the title of example, we present the following situation: a trading company offers a service for a foundation (collecting the garbage) without charging any amount of money, on the basis of a contract titled "of sponsorship", considering that it is realizing a "sponsorship in services".

From the definition of sponsorship that we presented in the introductory part of our material, it results that its object consists of assets or financial means, since the law does not provide the possibility of sponsorship "in services".

Since there are not accomplished the conditions in order to qualify the contract as sponsorship, the expenses occurred by the accomplishment of these services does not take benefit of the favorable fiscal treatment, above mentioned, respectively it is not made the deduction from the tax on profit, because they are anyway non-

deductible, since there are not accomplished for the purpose of obtaining excisable incomes (article 21 paragraph 1 from Tax Code).

A solution in order to reach the same conclusion, financially speaking, but with a favorable tax regimen, it would be that the trading company would make an invoice to the foundation for the service, and, at the same time to conclude a contract of sponsorship having as object an amount of money equivalent with the price of the service.

3. Fiscal treatment, from the point of view of VAT, for the activities of sponsorship and patronage

From the point of view of VAT it is imposed to mention that Law no. 571/2004, with the subsequent amendments and additions (Tax Code) establishes rules in this field (of VAT) only for the hypothesis when the object of sponsorship/patronage action is made of goods and services. Sponsorships in cash do not belong to a regulation referring to VAT; in fact a trading company can realize sponsorships or patronage actions in cash in an unlimited quantum, without any obligation regarding VAT.

In order to present the tax regimen of VAT of the sponsorship and patronage actions there are necessary some mentions regarding the "deliveries to the self" and "services to the self".

Any delivery of goods which is done by payment is an operation which belongs to the application sphere of VAT. A delivery which is done without payment does not belong to the application sphere of VAT, but for the case when it is precisely mentioned the contrary in the legislation. Those operations express mentioned, although made without payment which the law giver considered as being with payment and, consequently excisable operations from VAT point of view, are defined as being deliveries to the self (article 128 paragraph 4 from Tax Code). The reason for which there have

been regulated the deliveries to the self is the following: the excisable person deduces the tax in the moment of the acquisition; if subsequently these goods are donated they must be charged because the excisable person becomes in this case the final consumer of the goods.

A similar reasoning it is also applied for the case of services, denominated "services to the self" (article 129 paragraph 4 from the Tax Code).

With exception from the provisions referring to the "deliveries to the self", respectively referring to the "services to the self", the sponsorships and patronage accomplished within a certain ceiling are withdrawn by the law giver from the applicable sphere of VAT.

We mention below the tax regimen from VAT point of view, of the sponsorship and patronage actions as they result from the tax code and methodological normatives of their application.

Giving goods of small value for free does not constitute a goods delivery within the actions of sponsorship or patronage (article 124 paragraph 8 letter f from Tax Code).

Using the goods which resulted from the economic activity of the excisable person as a part of offering services for free does not constitute an offer of services with payment within the actions of sponsorship, patronage (article 129 paragraph 5 letter a from the Tax Code).

The goods offered for free within the actions of sponsorship or patronage, respectively using the goods resulted from the economic activity of the excised person as a part of services made for free, are not considered deliveries of goods, respectively services if the total value during a year situates in the limit of 3 to thousand from the determined turnover according to article 152 paragraph 2 from the Tax Code (point 6 paragraph 11 letter b from the Government's Decision no. 44/2004).

Framing in the ceiling mentioned above it is determined on the basis of the data reported through the annual financial situations. There are not taken into consideration for the framing within this ceiling the sponsorships and patronage actions given in cash. Exceeding the ceiling constitutes services, respectively delivery of goods with payment and it is collected the tax; if there has been used the deductible right of the afferent tax of the acquisitions which exceed the ceiling. The collected tax afferent to the exceed it is calculated and included in the expense account drawn up for the fiscal period when the excisable person filed or has to file the annual financial reports.

In order to illustrate these rules we present the following study case:

A trading company has done sponsorships in goods in a financial year estimated to 1000 u.m. For goods with a value of 700 u.m. The company deduced a VAT of amount of 133 u.m., and for goods of 300 u.m the company has not deduced VAT (there have been acquired from a company which is nor registered with VAT).

The turn-over in the financial year is of 300.000 u.m.

We calculate the ceiling within which the company can make sponsorships, patronage actions, without these ones being considered a delivery or service:

$$3/1000 \times 300.000 \text{ u.m.} = 900 \text{ u.m.}$$

We notice that the company has done sponsorships evaluated to 1000 u.m., actually exceeding the ceiling with 100 u.m. Since the company deduced VAT only from a part of the goods which made the object of the sponsorship it is necessary to determine in the case of the acquisitions which exceed the ceiling, for which one of these there has been deduced VAT.

We propose that this calculation to be made as it follows:

We calculate the share of the acquisitions for which there has been deduced VAT, totally acquisition:

$$700 \text{ u.m.} : 1000 \text{ u.m.} = 70\%$$

We apply this share to the ceiling exceed: $100 \text{ u.m.} \times 70\% = 70 \text{ u.m.}$

This shall constitute the excisable basis for VAT which must be collected:

$$70 \text{ u.m.} \times 19\% = 13,3 \text{ u.m.}$$

For the case when the ceiling is exceeded there is the obligation of drawing up an auto-invoice. The auto-invoice will comprise both in the column "supplier" as in the column "buyer" the information referring to the excisable person, and in the case of goods/services given for free within the actions of sponsorship/patronage instead of the denomination and the description of the delivered goods or services it can be mentioned, according to the case: exceeding the ceiling for sponsorship or patronage.

We stress the fact that in VAT field the Tax Code regulates a definition of the turn-over which serves as basis for the calculation of the ceiling and which does not overlap the definition the the turn-over regulated by the order of the ministry of public finances no. 1752/2005.

So for the purpose of calculating the ceiling for VAT, the turn-over comprises: chargeable activities, actions exempted with deducing right, actions exempted without deducing right stipulated in article 141 paragraph 2 letter a, b, e and f, if these ones are not annexed to the main activity. The turn-over does not comprise the deliveries of fixed corporal assets or non-corporal, as they are defined in article 125¹ paragraph 1, point 3, made by the excisable person; the intra-community deliveries, of new means of transport to a buyer who does not inform the supplier about a valid registration code for VAT purposes, exempted according to article 143, paragraph 2 letter b.

4. Conclusions

Analyzing the reasons for which the trading companies make sponsorship and/or patronage actions, the conclusion is that these are aware only of the fiscal advantages which law offers, without

taking into consideration that in this way also realize a general interest of the community.

Due to this situation, in this moment only the trading companies which have a minimum profitability can make sponsorships and/or patronage actions. Consequently it is imposed for

the co-involvement of the trading companies for making sponsorship and/or patronage actions to amend the tax legislation in the way of increasing the deductibility ceiling from the tax on profit of the expenses made for this purpose.

REFERENCES

| | |
|-----------------|--|
| Buziernescu, R. | <i>Fiscality</i> , Universitaria Publishing House, Craiova, 2007 |
| xxx | <i>Law no. 32/1994</i> |
| xxx | <i>Law no. 571/2003</i> |
| xxx | <i>Law no. 1752/2005</i> |