

THE INCOME'S INTEGRATION INTO THE TAX BASE OF SPANISH LEGAL PERSONS' TAX

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ABSTRACT

This paper seeks to understand how the corporate income tax law integrates into the tax base the income of Spanish companies. For this purpose, it examines the European Community's legal dispositions of the Spanish case study. It makes an analysis of several data sources of Spain, mainly, the Accounting law and the Corporate Income Tax Law. Results show that the Spanish Tax System, since 1995, assumes the direct estimation regime as a method of corporate tax base's determination. It means that this jurisdiction assumes the profit determined under the accounting standards as available ability to pay's the criterion, although subject to law's adjustments. Thus, the income constitutes a tax base's element; its integration happens due to the acceptance of the accounting profit, where the income also represents one of the components. In this way, corporate income tax legislator does clarify the concept of income referring to the accounting law. This research aids in understanding better the determination of the taxable basis of companies, clarifying how the recognition of the company's income occurs.

Keywords: Spain, European Union, Corporate Income Tax, Taxable base, Income.

INTRODUCTION

The tax system has the purpose of tax justice, from which taxpayers' rights and obligations derive (STC 173/1996), it is the case when tax principles are respected, including the principle of legal certainty, equality, and the ability to pay (Peragón, 2003). The Spanish constitution in Article 31.1 states that everyone must contribute to the sustenance of public spending. The contributory capacity of each taxpayer ensures the duty to pay taxes (Garcia, 2005). However, the imposition of taxes depends on observing the principle of legality; that is, only with the recourse to the law can taxes be imposed (Lapatza, 1992). Thus, the duty to pay taxes is implicit. The ability to pay criterion applies not only to natural persons but also to legal persons or similar organizations (Morais, 2009). In the words of Nabais (1998), the nature of legal persons is not incompatible with the fundamental duty to pay taxes. For this reason, States do not relinquish corporate income taxation (Martins, 1999; Morais, 2009; Nabais, 2018; Seijas, 1995; Tavares, 1999), and the determination of the taxable basis is a relevant issue and to know well the components of the tax base in the corporate income tax law.

It is why researchers show interest in to investigate the corporate income tax basis of different tax jurisdiction (Baker, 2018; Benjasak & Bhattarai, 2019; Delgado et al., 2019; Freebairn, 2015; Martins, 2018; Ozolina & Auzina-Emsina, 2018; Previti et al., 2017). Aldeia (2019) relates the going concern's accounting principle and the Spanish corporate tax law. Therefore, it is feasible to assume that even though there are some topic's findings, the idea is yet underexplored, and to the best of our understanding, there are not researches on the corporate income tax base of Spanish's case. In particular, there is a necessity to comprehend better: How

corporate income tax law incorporates in the taxable base the income of Spanish legal persons. This investigation addresses this gap by exploring the legal standards that approached the issue. The research question tackled by the study is: How corporate income tax law integrates into the tax base the income of Spanish companies? For this purpose, it examines the most pertinent Spanish legal rules. This manuscript has four sections. The first is the introduction, and it explains the topic context. The second section talks about the corporate income taxable basis of Spanish enterprises. Then, the document explores the income's integration in the corporate income tax. Moreover, in the fourth section, it presents conclusions.

CORPORATE INCOME TAXABLE BASIS

The profit calculated under the accounting standards is the starting point to the determination of the corporate income tax's tax base (Ortega, 2015). For determining the applicable rules for the quantification of taxable income, the legislation refers, unless specified explicitly in the LIS, to accounting standards (Aldeia, 2017). The law assumes profit, established under the accounting concepts and legal dispositions. The article 10.3 of the LIS makes that assumption. It explains that the standards provided in the Commerce Code and the other laws and provisions relating to this determination constitutes the normative basis to profit formulation subject to taxation. Thus, mandatory compliance accounting rules determine an essential part of the tax base that is not expressly regulated by the LIS. Therefore, greater information transparency is a requirement imposed on economically advanced societies. Economic agents are required to report periodically accurate information on their financial situation and result achieved. Legal standards and the needs of the international community increasingly demand objective and reliable information, trying to safeguard the interests of users of financial information. Accounting records allow the Financial information obtaining, so it must-have characteristics of homogeneity, language, and structure accessible to all users of the financial statements. Hence, since a few decades here, efforts have been made towards accounting standardization.

Therefore, the need for accounting standardization comes from the business world increasingly taking on an international dimension, no longer existing economic spaces delimited by national borders, which is why we no longer have a standard for each country, having standards that serve as the basis to a set of countries. It is the case of the European Union, whose member states have had to progressively adapt their standards in order to achieve common accounting standardization (Aparicio & Guillén, 2008).

In this theoretical background, this research wants to answer one question: How corporate income tax law integrates into the tax base the income of Spanish companies? In order to solve it, the paper analyzes the European Community's legal structure, in particular, in Spain's case study. It makes an examination numerous data bases of Spain: the Accounting Law, the Commerce Code; the Anonymous Companies Law; and the Corporate Income Tax Law.

THE INTEGRATION OF INCOME IN THE CORPORATE INCOME TAX

Income constitutes the positive component of the taxable base, in corporate income tax. To Machado (2006), patrimony and income constitute the better forms of ability to pay's the primary expression. A tax is fair if its collection observes the ability to pay to each taxpayer (Cascán,

2000). The consumption is, also, an indicator of the taxpayer's ability to pay to add, thus, to the patrimony and the income, in a fair tax system's establishment (Machado, 2006). So, there is a tendency to accept the gross income as a valid indicator for the determination of the taxable base of the corporate income tax. According to Machado (2006), this tendency results from the sustained theory that a) the end consumer supports the tax on production and movement; and b) the lack of enforcement by the Tax authority because it is easier to control gross receipts than profits. It happens due to the corporate income tax law's acceptance of accounting standards, taxation not only accepts magnitudes, but also assumes as own accounting concepts (Lapatza et al., 2013). The concept of tax income coincides with the concept of accounting income, except for corrections that may be established by tax law (Albá, 2004). Thus, the accounting law purges this concept in the Commerce Code (CC)-Código de Comercio, and Accounting law-Plan General de Contabilidad (PGC). The corporate tax base's determination accepts all incomes considered as such for accounting purposes, except if LIS has a particular legal provision about its tax consideration (Viguera, 2015). Article 4 of the LIS defines the chargeable event as the income obtained by the taxpayer's, whatever its source or origin. Moreno (2005) understands that it constitutes a brief concept, so it makes it difficult to comprehend, in a definitive way, what the tax legislator wanted to outline as income concept for the corporate income tax. The same author contemplates that the doctrine was not exact in the study of the income concept, and it abandoned the income sources' classification by Ley 43/1995 that approved the LIS. This fact promoted the doctrinal disinterest. Also, regarding article 4 of the LIS, Prieto & Cámara (2012) try to present your income concept proposal. They consider as a net increase in equity tax-adjusted, between the first and last day of the fiscal year, and which does not come to the shareholders' capital contributions. An analysis of the first articles of the LIS suggests that the entire income earned by the taxable person is taxed, and therefore any incidental income, capital gains, and acquisitions on a profit basis. Article 17 of the LIS confirms this statement. Also, article 121.1 and 121.4 of the LIS expressly refers, they are also considered returns the presumed assets whose ownership corresponds to the taxpayer, and their accounting record has not a register. The legislator has the same understanding in the case of partial concealment of the acquisition value. The old law of the Anonymous companies of Spain-Texto Refundido de la Ley de Sociedades Anónimas (TRLSA)¹ Article 189 of the same law clarified the companies' income types, helping the income statement's preparation. Whereby, the major part of the regulation is oft accounting nature because the LIS remits implicitly to accounting regulation, in the moment of the determination of the income subjects to corporate taxation (Pascual & Zamora, 1998). The primary concern in accounting for ordinary income is to determine when it should be recognized. The determination of the company's ordinary activities' income occurs when future economic benefits are likely to flow to the entity, and these benefits can be reliably valued. It considers as such for accounting purposes is charged to the determination of the tax base of the LIS. It does not happen when the LIS determines particular tax rules imposing specific tax treatment (Jurídica, 2018).

¹Retired by the Royal Legislative Decree 1/2010, of July 2, which approves or Consolidated Text of the Capital Companies Law - Texto Refundido de la Ley de Sociedades de Capital.

CONCLUSION

This paper aims to understand how occurs the integration of the income into the tax base of legal persons' tax in Spanish tax jurisdiction. The results show that since 1995, Spain legal assumes the accounting profit as a valid criterion to pay tax when talking about the corporate taxpayer, in the moment of the determination of the taxable basis. This acceptance accrues article 10.3 of the corporate income tax law of Spain. This legal disposition determines, implicitly that the companies' profit determined under accounting standards and concepts satisfy the ability to pay a tax of the Spanish legal persons. The LIS assumes it but clarifies that it is true when there are not particular norms the LIS that stablish different understandings. So, two elements constitute the LIS's tax basis, and it means the income and the expenses. The income constitutes the taxable base's positive component, because of the referred remission, Corporate tax Law does not clarify the concept of the income. It only determines that the income is the chargeable event obtained by taxpayers, whatever the source or origin. This study helps to better understand the entities' determination of the taxable basis, in particular, clarifies how the recognition of the company's income occurs. Although the topic pertinence, it only explores a tax jurisdiction that constitutes a limitation. It could be useful to extend this study to other tax systems, allowing them to conclude if those use the direct estimation regime in the determination of the taxable income of the companies.

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