

TAXATION AND TAX OBLIGATIONS OF RESTAURANTS. THE PORTUGUESE CASE STUDY

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ABSTRACT

The main goal of this paper is to understand the taxation and tax obligations of Portuguese restaurants. For this purpose the Portuguese tax law was investigated, mainly the Corporate Income Tax Law, the Value-Added Tax Law, and the Social Security law. Other important legal dispositions that determine specific tax requirements to this kind of business were also analyzed.

The results show that, for medium and big companies, the income taxation is determined having as underlying the accounting profit. This result is adjusted to the tax purposes and for this reason it may be subjected to corrections. In the case of small businesses this determination is simpler. It has as base the total amount of sales and it is presumed as a net income what is applied to the tax rate.

The companies need to respect the rules of VAT. It implies to send a tax declaration and to pay or to return tax periodically. Also, restaurants have to assume big tax obligations to be allowed to develop their activity in Portugal.

Companies are being overwhelmed with tax compliance obligations. This implies the increase of the companies' context costs and it raises the risk of penalties. Many SMEs have restricted resources and cannot afford to bear these administration expenses.

This situation implies the increase of undeclared economy, in which businesses do not pay the correct tax and do not observe the tax obligations, supporting therefore less costs to develop their activity.

Keywords: Portugal, Tax Obligations, Taxation, Corporate Income Tax, VAT.

INTRODUCTION

This paper presents an analysis of how the Portuguese restaurants business are taxed and what kind of tax obligations they need to observe. For this purpose, as referred in the abstract, the Corporate Income Tax Law “*Código do Imposto sobre o Rendimento das Pessoas Coletivas-CIRC*”, the Value-Added Tax “*Imposto sobre o Valor Acrescentado-IVA*”, the Social Security law (Código Contributivo) and other important legal dispositions that determine specific tax requirements to this kind of business were analyzed.

The expected characteristics of the tax system are fairness, efficiency and simplicity. A complex tax system is not attractive to taxpayers and tax authorities. For tax payers it means that the system might be insecure and uncertain, mainly in what concerns the tax law's application and higher administrative costs. Compliance costs can be (1) spending a lot of time to comply with the tax obligations (Sanches, 2010), (2) the lack of tax literacy of the taxpayers implies the resource to tax expertise to present the tax declarations and (3) an incorrect interpretation of the law implies penalties (Pereira, 2011).

For tax authorities this means: (1) more administrative costs of implementation; (2) more costs related to the monitoring of developed fiscal policies; (3) and an increase of taxpayers' tax erosion. Furthermore, it increases litigiousness in tax jurisdiction because of the complexity of legal tax dispositions. So, the simplicity of the tax system is an essential condition to the good operation of the tax system itself (Martins, 2015).

In the last decades taxpayers saw an increase of tax obligations in all the fiscal areas, some of them in order to reduce the tax erosion of taxpayers. Although some recognized advances concerning the tax receipt this measure has undoubtedly increased the complexity of the tax system. Portugal was not an exception.

In recent times, the Portuguese taxpayers have experienced an increase of taxation and tax declarations. This situation is also extended to the development of restaurant activity. These entities feel a lot of difficulties to sustain the business obligations and this is more evident in small businesses. This fact has led to the increase of a parallel economy or undeclared economy as a consequence. When managers choose to resort to this parallel economy, businesses don't pay the correct tax and don't observe the tax obligations, supporting less costs to develop their activity.

This paper is composed by six sections. First, the introduction, in which a framing of the subject is done and where it is explained why it is important and updated to study this issue. Second, an analysis is made of the importance of the payment of taxes by the companies and why to have tax obligations. In the third section it is done an examination of the taxation imposed by corporate income tax law and its tax obligations. After, the taxation obliged by the Portuguese Value-Added tax and its fiscal declarations are also presented. Next, in the fifth section, are mentioned other tax obligations of the restaurants. Finally, in the sixth section, the conclusions.

LITERATURE REVIEW

Article 103.3 of the Portuguese Constitution determines that nobody can be obliged to pay taxes if those taxes have not been established in accordance with the Constitution. In these terms, the Portuguese legislator holds the true power not to pay taxes, unless they are created in accordance with the Constitution (Nabais, 1990). On the other hand, article 12.2 of same legislation defends that societies are entitled to enjoy their rights and are subject to the legal duties compatible with their nature.

According to Nabais (1998) the contributory capacity is applied to a corporate person. The nature of legal entities is compatible with the obligation to pay taxes under the contributory capacity's principle. Companies assume important papers in tax matters because they can be taxpayers, a taxable person or tax managers (Nabais, 2015).

Literature has been identifying the reasons why corporate people have to pay taxes, in particular, to pay corporate income tax. This is to prevent the existence of gaps in the companies' income taxation. It means that if this kind of taxation doesn't exist, shareholders have a big reason to not distribute dividends in order to postpone the taxation. In that case the taxation would only occur when and in accordance with the amount distributed with the investors. That income would be taxed only under the sphere of the company's members (Ribeiro, 1989).

Capital investors can be an individual person and a corporate person. As a consequence of globalization, it is frequent that the shareholders aren't of the same jurisdiction as the

corporate one. When it happens it seems clear that the Tax Authority can have an effective difficulty to tax dividends if there is no taxation under the business' sphere (Nabais, 2015).

Presently, taxation is also an instrument of economic policy, depending on the legislator's expectation. If an increase of the corporate's savings is wanted, taxation penalizes the distribution of the dividends. If a dynamization policy is expected with the purpose of increasing the movement of the investments, taxation will benefit the distribution of dividends (Morais, 2009).

Corporate Income Tax

The income taxation of restaurants is based on tax profit; it means that the taxation occurs concerning a tax base. It may not be exactly equal to the accounting profit (Pires & Pires, 2010). It means that the taxable profit has as underlying the net profit calculated under the accounting standards (Silva, 2015). This determination occurs under the tax direct valuation method of the tax and it means that for the determination of the tax base the result obtained under the accounting rules is used but it is subjected to negative or positive tax corrections (Nabais, 2015).

Small businesses can be taxed under simpler tax rules. In this case the tax profit is not relevant to the determination of the tax base (Silva, 2014). If this is the case they need to present some cumulative requirements present in article 86-A and 86-B of the CIRC. The simplified regime can be applied to companies that have had an annual amount of gross income lower than € 200 000 and the total of the balance sheet does not exceed € 500 000 in the last tax period. In that case the tax base is determined having as base the coefficients provided for in article 86-B of the CIRC applied to the total amount of gross income of each income category (PWC, 2018).

Presently, according to article 87 of the CIRC, the general tax rate is 21%. In the case of small and medium companies concerning the first €15 000 of tax base the rate is 17% and 21% for the remaining.

However, in the last decades, in Portugal it has been verified the increasing of other kind of corporate taxation, it is the case of autonomous taxation. This concept was created by Decree Law No 192/1990, outside of the corporate income tax code. Later, it was developed with law 30-G/2000 and it was to incorporate on the Corporate income tax code.

Currently, there are several expenses subjected to this kind of taxation. They are expressly predicted in article 88 of the CIRC. They are: non-documented costs, vehicle-related expenses, entertainment expenses, profits distributed to tax-exempt entities, compensation paid to managers, allowances and compensation for use of their own vehicles by the employees, and payments to entities located in tax-favored territories (Dinis et al., 2018).

According to Martins (2015) this taxation has two goals. First to avoid the corporate income tax base erosion because it allows the taxation under expenses that can be deducted to the accounting profit. It implies an increase in taxation, representing a discouragement for taxpayers to present this kind of expenses. The second goal is to apply penalties for the taxpayer's evasive behavior.

In addition, companies must support also a municipal corporate income tax, called "*derrama municipal*". Law 73/2013, of September 3, approves the financial regime of intermunicipal entities. According to article 18.1 of that law companies must pay a tax that can vary and reach the maximum limit of the 1,5% of the period's tax profit (Sousa, 2018).

This municipal tax occurs following the attribution of tax powers to municipalities, that is, autonomy in the collection of revenues and expenses (Vasques, 2009). This kind of taxation is

additional to the corporate income tax (Ferreira, 1995; Matias, 2009; Morais, 2009; Porto, 1998; Vasconcelos, 2009).

This tax imposes the delivery of the entity's Annual Income Statement until May 31 of the following year, under the legal provisions of articles 120.1 and 104.1.b), both of the CIRC. This tax statement allows the determination of the company's effective corporate income tax. With the preparation of that tax statement one of three conclusions are possible to be drawn. First, the company had already paid in advance the same tax that it is due, so it does not have to pay more. Second, the company had paid in advance less tax than it is due, so it has to pay the difference. Third, the company had paid in advance more tax than it is due, so it has the right to receive a refund, which is the amount of tax overpaid.

Articles 117 and 121 of the corporate income tax establishes the obligatory sending of the annual declaration of accounting and tax information, usually called as Simplified Business Information. This tax statement also includes sending information to the Bank of Portugal, Statistics Portugal, Institute of registries and notaries, among many others. It is delivered by electronic means. It includes the declaratory obligations of accounting, tax and statistical nature. They are: the registration of accountability; the provision of statistical information to the National Institute of Statistics; the provision of information on annual accounting data for statistical purposes to Banco de Portugal; to provide information of a statistical nature to the General Direction of Economic Activities. Through this tax obligation all the information that companies have to provide concerning their annual accounts is transmitted in a single moment and to a single entity.

Value-Added Tax

The Portuguese catering business also needs to observe the Value-Added Tax rules, approved by Decree Law no.394-B/84, of December 26. They are taxable entities that are subjected to the mechanism of VAT settlement and deduction.

In that case, the supported VAT on the company's expenses is recovered because the company has the right to deduct the paid tax in the acquisitions, according to article 19 of the Portuguese VAT Code.

In accordance with article 22 of VAT Code, the right to this credit operates in two ways, through the compensation or the refunding to the taxpayer. The first option means that the taxable person subtracts (deducts) the amount of deductible tax he has borne in that period from the amount he owes to the tax authorities by the settlement to the costumers. The second option means that the taxable person may request to the Tax Authorities the reimbursement of the amount of which he is a creditor.

However, for the deduction to be possible, purchases of goods or services must be made in order to carry out taxable transactions or operations which are fully exempted.

The effective amount tax payer has to pay of VAT tax is determined with the delivery of the periodic VAT return. This tax statement is sent by electronic transmission of data with monthly or quarterly frequency.

Quarterly periodicity is for a taxable person with a turnover of less than €650,000, in the previous calendar year. The tax statement's delivery is until the 15th of the second month following the quarter to which the operations are respected.

The monthly frequency happens for a taxable person with a turnover of €650,000 or more in the previous calendar year. The delivery is until the 10th of the second month following that to

which the operations are concerned. This frequency can occur also to the passive subjects who opted for the monthly periodicity and present a turnover inferior to the limit.

According to article 29.1.b of the CIVA, the business activities related with catering have the obligation to issue an invoice for each transmission of goods or services. This obligation does not depend on the quality of the purchaser of the goods or the recipient of the services, the rule is transverse application. The obligation is sustained even if the customer does not request it, as well as payments made before the date of the transfer of goods or the provision of services. It has as main goal promoting the requirement of an invoice for each transaction and reducing tax evasion associated with the omission of duty of issuing documents proving the transaction.

The same tax law, in article 29.1.g, determines that the taxable person must have accounting records to enable tax assessment and verification.

This kind of taxpayers also have the obligation to maintain the archiving and keeping accounting books for 10 years; article 52 of the same tax law is the legal standard. According to article 76 of the VAT Code, a taxable person that has more than one establishment should centralize bookkeeping in one of them.

Moreover, the VAT Code foresees the delivery of other three tax statements of obligatory fulfilment. They are: the declaration of starting the activity, the changes' declaration and the declaration of cessation of the activity. The first must be delivered before starting the activity, it consists of communicating to the tax authorities the intention to initiate the development of a business. The second must be delivered when a change occurs in the elements contained in the Declaration of Starting of Activity. It has to be delivered within 15 days. The third, the declaration of cessation, must be delivered within 30 days after the cessation of the activity.

Other Tax and Tax Obligations

Article 119.1.c of Law 66-B/2012, of December 31, establishes the submission of the Monthly Statement of Remuneration to the Tax Authority. It determines that the entities responsible for income from dependent work are obliged to submit monthly a formal model statement. It includes information about the incomes and their respective tax withholdings, social security's contributions and legal subsystems of health, as well as contributions to workers unions. This information refers to the previous month.

Articles 98.3 of the CIRS and article 94.6 of the CIRC recognize the obligation of the declaration and respective payment of IRS and IRC withholdings made in the previous month.

The entities required to withhold IRS and IRC must proceed with the delivery of the corresponding amounts using the model, observing constantly the codification.

Article 3 of Decree Law 198/2012, of 08/24, amended by Law 42/2016, of 12/28 determines that companies must communicate electronically the elements of invoices issued in the previous month.

The aim of this law is to create an effective instrument to combat the parallel economy, to widen the tax base and to reduce unfair competition.

Article 3-A of Decree Law 198/2012, of August 24, and the Administrative Rule 2/2015, of 06/01 determines the yearly communication of inventories. The communication of inventories is carried out by electronic transmission of data through a file with characteristics and structure defined by the Government. The intention is to provide to the Tax Authority reliable information on the quantities of inventories of the companies. The objective is to control the costs of the

goods sold and consumption and the result obtained by the taxable person at the end of each financial year for the purposes of determining their respective taxable income.

Decree Law 198/2012, of August 24, introduces changes to the system of circulation of goods approved by Decree Law 147/2003, of July 11. It determines the company's obligation to send to Tax and Customs Authority all the elements of the documents concerning the transport of goods. This obligation allows the Tax Authority to strengthen the effective control of operations carried out by economic operators. On the other hand, it simplifies and speeds up compliance with this obligation that the companies have of issuing the transport documents.

The contributions that must be paid by the employer are calculated by applying the contributory rates to the remuneration of the workers. One part shall be paid by the beneficiary (beneficiary's contributions), and another by the employer (employer's contributions) (ISS, 2018). The amount of the contribution is calculated, in general, by applying a contributory rate to the gross remuneration, it means to the basis of incidence. For catering companies the global contributory rate is 34-75%. This general rate is composed by two rates, being the rate of 23-75% the employer's contribution and the rate of 11% the worker's contribution.

Article 40.2, of the Code of Regimes of the Social Security System identifies the requirement of submission of the Monthly Statement of Remuneration to Social Security. Contributing entities are obliged to declare to social security, for each of the workers at their service, the same working information. It is necessary to communicate the value of the remuneration that constitutes the tax base, the corresponding working times and the applicable tax rate. That declaration is submitted until the 10th of the following month to which it relates.

CONCLUSION

The corporate income tax of restaurants has as goal the taxation of the real income of the corporations. It happens under the express legal disposition of the Portuguese Constitution. It is determined having as base the business profit calculated under accounting rules and communicated in tax declarations.

Portuguese VAT imposes tax rules that must be obliged. This kind of business needs to respect those rules. It imposes the sending of VAT declaration and the observation of their own tax rules. Companies can be subjected to high penalties if this is not observed.

Companies are being overwhelmed with tax compliance obligations. One consequence is the increase of administrative costs. It can lead the managers to decide in favor of a parallel economy, by not reporting all the economic transitions and, consequently, supporting less developing expenses.

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