

COMPARATIVE ANALYSIS OF DEPENDENT ACTIVITY VERSUS INDEPENDENT ACTIVITY FROM TAX AND DUTY PERSPECTIVES

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Abstract: This research aims to carry out a comparative analysis of the dependent activity, from the tax and accounting point of view, performed based on the individual employment agreement, versus the independent activity, regulated by the Civil Code, based on the service agreement. Furthermore, we reviewed a short theoretical presentation centered on the conceptual delimitations of the two types of activities, approached from the framework perspectives of taxes and duties as tools for achieving fiscal policy. These activities are constantly changing from a legislative perspective, aiming at consolidating the Romanian budget and increasing tax revenues.

Keywords: dependent activity, independent activity, duties, taxes, financial policies

1 INTRODUCTION. THEORETICAL DELIMITATIONS

Pursuant to the existing financial legislation in force, nationally, the concept of dependent activity is described as any activity performed by a natural person in a revenue-generating employment relationship.

This activity is carried out based on a collective labor agreement regulated by the Labor Code, with or without a basic position. Therefore, from this approach perspective, according to the provisions integrated in chapter 1, article 10, the individual employment agreement is the contract, pursuant to which, a natural person, hereinafter referred to as an

employee, in return for a remuneration called salary (the wage), commits to perform work for and under the authority of an employer, natural person or legal person.

Furthermore, the agreement is subject to Romanian labor legislation, so that the employee benefits from social protection/rights related to the execution of the individual employment agreement (Chapter II of the Labor Code), working conditions, access to professional training, equal opportunities and treatment, annual leave, weekly rest, health and safety at work etc. Chapter IV of the Labor Code, by means of article 49, regulated the ways in which the individual employment agreement could be suspended de jure, by mutual agreement of the

parties or by the unilateral act of one of the parties. Such an agreement may terminate de jure, as a result of the unilateral will of one of the parties, in the cases and under the limiting conditions provided by law, as a result of the parties' mutual agreement, on the date decided by them, aspects set forth by article 55 of the Labor Code.

In order for an activity to be reconsidered as a dependent activity, at least one of the following criteria is must be met:

- the relationship between the income recipient (Self-employed person/Sole proprietorship/Family owned and operated business) and the income payer (client of the Self-employed person/Sole proprietorship/Family owned and operated business) the management bodies of the income payer respectively, is a subordination relationship, and the income recipient observes the work conditions imposed by the latter: his/her duties and the way to fulfill them, working hours, place of employment;

- the income recipient, while performing the activity, exclusively uses the income payer's material resources, such as special work or protective equipment, premises with appropriate endowments, work tools or the like and contributes with physical performance or intellectual capacity, not with his/her own capital;

- the income recipient's travel expenses are borne by the income payer, in the interest of carrying out the activity: the delegation-detachment allowance in Romania and abroad, as well as other similar expenses;

- on the account of the income recipient, the allowance for vacation leave and the allowance for temporary work incapacity, are borne by the income payer.

When an activity is reconsidered as dependent activity, the mandatory social contributions and the income tax, established by law, will be recalculated and transferred, being owed jointly by the income payer and the beneficiary. In this case, the rules for

determining the income tax for wages outside the basic position are applied.

Exercising an independent activity implies carrying it out in the usual way, on one's own account and pursuing a non-profit goal by a natural person, other than the dependent one, namely other than the one based on an employment agreement.

Among the criteria that mainly define the existence of an independent activity are:

- free choice of activity, work schedule and place of work;

- the risk undertaken by the entrepreneur;

- performing the activity for several customers;

- the performance of the activity can be direct, but it may also be carried out with the staff hired by the entrepreneur in compliance with the law;

- is carried out by the self-employed person, who uses his/her intellectual capacity and/or physical performance, depending on the specific activity conducted;

- the self-employed person is part of a professional body/order that represents, regulates and supervises the profession carried out, according to the special legislative acts that regulate the organization and exercise of the profession concerned;

- the self-employed person has the freedom to perform the activity directly, with hired staff or by collaborating with third parties in accordance with the law.

The previously mentioned criteria were highly debated, because of the difficulties encountered while struggling to comprehend them, except for certain clarifications regulated by the New Tax Code Enforcement Guidelines.

Pursuant to the law, the activities performed independently, which generate income from liberal professions, as well as copyright and related rights defined by the provisions of Law no. 8/1996 on copyright and related rights, with subsequent amendments and additions, cannot be reconsidered as dependent activities.

According to the criteria presented above, when an activity is classified as independent activity, it is taken into consideration that the legal relationship concluded between the parties must necessarily contain clear contractual clauses regarding the object of the agreement, the rights and obligations of the parties, so that the existence of a subordination relationship does not result, instead, the self-employed person's freedom of decision regarding the performance of the activity should result.

The parties will take into account that the concluded legal relationship reflects the real economic content of the transaction/activity.

Natural persons who permanently, occasionally or temporarily carry out an economic activity in Romania, have the obligation to register at and get authorized by the Trade Registry Office, under the conditions of the Government Emergency Ordinance number 44/2008, and can carry out their activities as Self-employed persons, owners of a Sole proprietorship or members of a Family owned and operated business.

The above-mentioned ordinance, on the performance of economic activities by Self-employed persons, Sole proprietorship or Family owned and operated business, does not apply to liberal professions, nor to those economic activities whose conduct is organized and regulated by special laws.

The same ordinance explains the following terms:

- **Self-employed person** - the economic enterprise, without legal personality, organized by a natural person who uses, mainly, his/her workforce;
- **Sole proprietorship** - the economic enterprise, without legal personality, organized by a natural person entrepreneur;
- **Family owned and operated business** - the economic enterprise, without legal personality, organized by the members of a family.

In order for the activity of the Self-employed person not to be reconsidered as a dependent activity, none of the criteria set out in Article 7 of the Tax Code must be found in the agreements concluded by Self-employed person/Sole proprietorship/Family owned and operated business with the beneficiary of services - clients.

It will be expressly stipulated in the service contracts that the provider will use his/her own work equipment, will carry out the activity in his/her own office, according to hi/hers own schedule, will not have the right to rest or medical leave allowance, in case of travel he/she will not have the related expenses compensated etc.

Furthermore, service agreements must comply with the criteria defining preponderance of the existence of an independent activity established by point 19 of the detailed rules for the application of article 46 of the Tax Code.

The agreement is subject to the civil code, so the provider does not benefit from the protection of labor legislation. There is a risk of reclassifying the service agreement into an employment agreement.

When it comes to natural persons carrying out economic activities independently or exercising liberal professions, pursuant to the Tax Procedure Code, the competence for managing tax liabilities that such natural persons owe (income tax, payroll tax, social contributions, VAT etc.) is established by the National Agency for Fiscal Administration Order number 2.021/2021, such competence being incumbent upon

- *the central tax authority in whose territorial range the fiscal residence of the natural person is located, determined pursuant to the provisions of art. 31 para. (1) letter a) of the Tax Code, more precisely the central tax authority in whose territorial range the natural person has the address where he/she has his/her domicile, according to the law, or the address where he/she actually lives, if this is different from his/her domicile.*

By agreement, the parties may decide the termination of the service contract: by agreement of the parties, by law (when the company is deleted from the trade register); unilaterally (subject to the notice provided in the agreement).

At European Union level, the concept of dependent activity versus independent activity continues to spark a lively interest, in this case aimed at tackling undeclared work.

In this regard, we recall European Union Decision number 344 of 2016 of the European Parliament and of the Council, dated March 9, 2016, on the establishment of a European platform for the intensification of cooperation regarding tackling undeclared work.

Therefore, the commission emphasized, from the very beginning, the need for better cooperation between the member states and announced that consultations will be launched on the establishment of a platform at European Union level between labor inspectorates and other authorities responsible for enforcing the law to tackle undeclared work, improving cooperation, sharing good practices and identifying common principles for inspections.

2 ANALYSIS OF TAX REVENUES

Romania, as a member state of the European Union, was granted significant European resources through the Multiannual Financial Framework (MFF), but also through the National Recovery and Resilience Plan (PNRR); nevertheless, the consulted reports show that the pandemic, the implications of the war against Ukraine, the exodus of human capital, the climate change highlight the fragility of the public budget.

On the one hand, even if Romania was included in the group of high income countries, in 2019, in terms of GDP/inhabitant expressed at the Purchasing Power Standard (hereinafter PPS), our country obtained tax revenues from all

major sources of relative low revenues compared to the GDP.

The European Commission issued a country report in 2023, which stated that Romania's tax revenues as a percentage of GDP were well below the level agreed by the European Union in 2021, although they registered a slight increase in terms of consumption and capital taxes compared to 2020.

The ratio between income tax on salary income and total tax income was well below the level agreed by the European Union, a situation that is argued by a low level of tax and duties collection due to the numerous waivers and exemptions that reduce the taxable base, corroborated with the preferential taxation regimes in certain sectors of activity and for certain categories of taxpayers. Under such conditions, the report highlighted Romania's low tax rates, compared to other Central and Eastern European states.

2.1 TAX RATES

Currently, Romania has established the following mandatory taxes, duties and social contributions, which are regulated by the Tax Code: corporate tax; tax on the income of micro-enterprises; income tax; tax on income obtained from our country by non-residents; the tax on representations; value added tax; excise duties; local taxes and duties; the tax on constructions, the special tax on high value immovable and movable goods.

This code regulates the following mandatory social contributions:

a) social insurance contributions (SIC), owed by the tax payer to the state social insurance budget;

b) social health insurance contribution (SHIC), owed by the tax payer to the budget of the single national health insurance fund;

c) work insurance contribution (WIC), owed by the tax payer to the general consolidated budget.

Pursuant to article 14 of Law number 227/2015 on the Tax Code, updated by Government Emergency Ordinance number 123 of 2024, the corporate tax rate that applies to taxable profit is 16%. Such tax applies to the taxable income corresponding to each source in each category to determine the tax on income from: salaries and salary equivalents; investments; self-employed activities; pensions; forestry and fish farming; transfer of the use of goods; agricultural activities; prizes and other sources.

As for the micro-enterprise income, pursuant to the provisions of the same aforementioned law, the tax rate is 3%.

For newly established Romanian legal entities, by way of exception, if they have been established for more than 48 months and have at least one employee, and if their shareholders/associates did not hold equity securities in other legal entities, the tax rate is 1%, according to the law, for the first 24 months from the date the Romanian legal entity is registered. The tax rate applies until the end of the quarter in which the 24-month period ends.

Micro-enterprises are obliged to apply the provisions set forth by article 43 of chapter II, Law number 227/2015, in order to declare, withhold and pay the tax on dividends paid to a Romanian legal entity.

The contribution to social health insurance for the shareholder who obtains income from dividends is 10%. The contribution to pensions for the shareholder who obtains income from dividends is 25%. Voluntary insurance for holidays and medical allowances is 1%.

Article 18 regulates minimum tax on turnover to be determined as follows: $MTT = 1\% \times (TV - V_d - I - A)$, where the indicators have the following meaning: MTT - minimum turnover tax, determined cumulatively from the beginning of the fiscal year/amended fiscal year to the end of the quarter/calculation year; VT - total revenues; V_d - revenues that are deducted from the total revenues, representing: the non-taxable

revenues set forth in art. 23 and 24; revenues from subsidies; revenues related to the costs of services in progress; revenues related to product inventory costs; revenues representing excise duties that were simultaneously reflected in the expense accounts; revenues from the production of tangible and intangible assets.

For the taxpayers who apply the annual payment system with advance payments, the provisions of para. (1)-(5) apply for quarters I, II and III of each fiscal year/amended fiscal year, by comparing the minimum turnover tax with the completion of the annual corporate tax being carried out by the deadline for submitting the annual corporate tax return. The comparison is made as follows:

a) for the first quarter, the minimum turnover tax is compared with the advance payment related to this quarter;

b) for the second quarter, the minimum turnover tax is compared with the sum of the advance payments related to the first and second quarters;

c) for the third quarter, the minimum turnover tax is compared with the amount of advance payments related to quarters I, II and III.

(7) For the taxpayers who apply the annual payment system without making advance payments, the provisions of para. (1)-(5) apply to determine the annual corporate tax.

(8) As for the tax group, the turnover exceeding 50,000,000 euros set forth in para. (1) is calculated by the responsible legal entity by adding up the turnover of the tax group members. The other provisions of para. (1) apply accordingly by the members/responsible legal entity; the same applies regarding the provisions of para. (2)-(7), (9) and (10).

Income obtained from independent activities includes income from services, income from liberal professions and income from intellectual property rights, production activities, trade, obtained individually and/or in a form of association, including from related activities.

(2) Income from liberal professions is the income obtained from the provision of professional services, according to the special legislative acts that regulate the organization and exercise of the profession concerned.

(3) Income from the capitalization of intellectual property rights in any form comes from copyright and related rights, patents, designs, trademarks and geographical indications, topographies of semiconductor products and the like. Tax and income from self-employment is established based on the annual income tax bracket; in the actual income system, based on accounting data; through withholding tax, including some income from self-employment.

For the year 2023, the following taxes and duties were in force: 1% if the company had at least 1 full-time employee; 3% if the company had no employees; the corporate tax is 16%; dividend tax of 8%; 10% case representing the contribution to social health insurance for the partner who obtains income from dividends.

For the year 2024, the following taxes are in force: 1% for income tax - if the income of the micro-enterprise is below 60,000 euros; 3% income tax - if micro-enterprises:

a) Have annual incomes between 60,000 and 500,000 euros;

b) Or if they have main/secondary activities in IT, hotel and catering industry, legal activities or medical activities according to the NACE code.

The corporate tax stays 16%, dividend tax 8%, and SHIC is 10% - Contribution to health insurance for the associate who obtains income from dividends.

For the Self-employed persons, the Romanian tax legislation provides for two ways of taxation, depending on their type of business: Self-employed person in real system (actual income system/method) and Self-employed person - income tax bracket.

The main difference between the two is income tax:

- For Self-employed persons in the actual income system, a 10% tax is applied to the net income, respectively the total receipts, from which the deductible expenses are deducted.
- For the Self-employed persons in the income tax bracket system, the 10% tax applies to the bracket.

The differences between Self-employed person in real system (actual income system/method) and Self-employed person - income tax bracket are given by the fact that independent self-employed person, as form of organization, the same taxes and duties apply:

1. **Income tax** - 10% relative to annual net income
2. **Social Health Insurance Contribution (SHIC)** - 10% relative to the net income; this is a deductible expense and has two exceptions to the rule:

Self-employed persons with annual incomes that don't exceed the threshold of 6 minimum wages (19,800 lei) will pay the contribution to SHIC relative to this minimum threshold (ie 1,980 lei). Exceptions to the rule are Self-employed persons with a parallel employment agreement, disabled people, students; they only pay 10% of the net income, even if the collected amount does not exceed the 6 wage threshold.

Self-employed persons with annual incomes above the threshold of 60 minimum salaries (198,000 lei) will pay the capped SHIC (namely 19,800 lei).

Social Health Insurance (SIC) - 25%, relative to the thresholds of 12 and 24 minimum wages:

- Income below 12 wages (39,600 lei) - the pension contribution is not mandatory.
- Income between 12 and 24 wages - the contribution is 25% of the 12 wage threshold.

- Income exceeding 24 wages (79,200 lei) – the contribution is 25% of the 24 wage threshold.

Value added tax (VAT) - 19% and is mandatory if the annual income exceeds 300,000 lei.

The taxes for Limited Liability Companies in 2024 are:

- Corporate tax* - 16%, if the LLC has no salaried employees;
- Dividend tax* - 8%, until 31.12.2024, and starting from January 2025, the percentage increases to 10%.

Micro-enterprises are included in the LLC scope and must simultaneously meet the following conditions:

- obtain annual income below 500,000 Euros
- private individuals own the share capital
- the company is not under liquidation procedure
- the company has a full-time employee (8 hours/day)
- revenues from consulting/management are less than 20% of total revenues
- shareholders cannot hold more than 25% of the number of shares or voting rights in at most one micro-enterprise.

Therefore, *the taxes for the micro-enterprises in 2024* are:

- 1% income tax - if the income of the micro-enterprise is below 60,000 euros
- 3% income tax - if micro-enterprises: have annual revenues between 60,000 and 500,000 euros; or have main/secondary activities in IT, hotel and catering industry, legal activities or medical activities with the following NACE codes:

Field	NACE codes
IT	5821, 5829, 6201, 6209
hotel and catering industry	5510, 5520, 5530, 5590, 5610, 5621, 5629, 5630
Legal activities	6910
Medical activities	8621, 8622, 8623, 8690

2024 taxes for other types of income (interests, investments, rents)

The social health insurance contribution (SHIC) for other types of income is 10% and is calculated considering three thresholds:

- if the income accumulated from other sources ranges between 6 and 12 gross minimum wages, SHIC is 10% of the 6 wage threshold (namely 1,980 lei).
- if the income accumulated from other sources ranges between 12 and 24 gross minimum wages, SHIC is 10% of the 12 wage threshold (namely 3,960 lei).
- if the income accumulated from other sources exceeds 24 minimum gross salaries, SHIC is 10% of the 24 wage threshold (namely 7,920 lei).

For income obtained from self-employment activities (Self-employed person, Independent self-employed person) and for income from other sources, the health insurance contribution is applied separately.

By May 25th, most forms of economic organization are obliged to submit the single declaration to ANAF (the National Agency for Fiscal Administration). For income from self-employment (Self-employed person, Independent self-employed person) and for income from other sources, the health insurance contribution is applied separately.

3 CONCLUSIONS

In the light of recent developments, a new tax reform would lead to an increase in budget revenues by finding solutions that do not burden taxpayers. The two types of activities - dependent versus independent are constantly changing, from the legislative point of view. This fact will lead to the emergence of new opportunities, but also to risks for entrepreneurs, requiring a process of continuous learning to remain relevant. The accounting profession, in general, and the financial auditor, in particular, will experience a transformational change, requiring new skills and abilities.

Comparative calculation	Individual employment agreement	Micro-enterprise 1%	Micro-enterprise 3%	Corporate tax 16%	Self-employed person – actual income system
Gross income	120,000	120,000	120,000	120,000	120,000
10% SIC	12,000	12,000	12,000	exempted	7,920
25% SHIC	30,000	30,000	30,000	exempted	19,800
2,25% WIC	2,700	2,700	2,700	exempted	exempted
10% Tax	7,800	7,800	7,800	exempted	9,228
1% Tax	exempted	1,200	exempted	exempted	exempted
3% Tax	exempted	exempted	3,600	exempted	exempted
16% Tax	exempted	exempted	exempted	19,200	exempted
Annual net income	70,200	118,800	116,400	100,800	83,052
8% Dividend tax	exempted	9,504	9,312	8,064	exempted
10% SHIC dividend tax	exempted	7,920	7,920	7,920	exempted
Net income	70,200	101,376	99,168	84,816	83,052
Total cost	122,700	141,324	143,532	155,184	156,948
Net income/ Total cost	57.21%	71.73 %	69.09%	54.65%	52.91%

In the table above, we highlighted a tax simulation for a 120,000 lei income/year, pursuant to the legislative conditions related to 2024. As provided by the tax code, the minimum reporting wage is 3,300 lei/year, for the calculation of the taxes owed by the self-employed professionals in 2024 having the reporting deadline on 25.05.2025, but also for

the natural persons who have obtained income from dividends and are obliged to prepare the Single Return Form and to pay the 10% duty representing his/her social health insurance contribution if the income exceeds 6, 12 or 24 national minimum gross wages (the minimum reference wage for 2024 is 3,300 lei).

The changes made were: the minimum wage changed on 01.07.2024 from 3,300 lei to 3,700 lei, and starting on 01.01.2025 from 3,700 lei to 4,050 lei. The dividend tax changed on 01.01.2025 increasing to 10% from 8%, which was the percentage applied until 31.12.2024.

In the table we started from 4 hypotheses, referring to income obtained between 01.01.2024 and 31.12.2024:

Employed person, and you have a gross income per year of 120,000 lei, the employer withholds and pays 25% SIC, 10% SHIC, 10% income tax, and the net income is 70,200 lei, you benefit from all the social security facilities;

You are organized as a company, micro-enterprise tax vector, 1% income tax rate. In order to benefit from this facility, you are obliged to have at least a full time salaried employee, who, obviously generates additional costs for the company. To benefit from the company's profit, the administrator allocates net profit and has the obligation to pay the dividend tax; the tax rate, on 31.12.2024, was 8% and if the income obtained exceed the amount of 6 minimum wages, namely 19,800 lei or 12 minimum wages, namely 39,600 lei, or 24 minimum wages, namely 79,200 lei, you are obliged to pay the social health insurance contribution for these thresholds.

You are organized as a company, micro-enterprise tax vector, 3% income tax rate. In order to benefit from this facility, you have the obligation to have at least one full time salaried employee, who obviously generates additional costs for the company. To benefit from the company's profit, the administrator allocates the net profit and is obliged to pay the dividend tax, the tax rate until 31.12.2024 was 8%, and if the income obtained exceed the amount of 6 minimum wages, namely 19,800 lei, or 12 minimum wages, namely 39,600 lei, or 24 minimum wages, namely 79,200 lei, you have the obligation to pay social health insurance contribution for these thresholds.

You are organized as a company, profit tax fiscal vector with 16% profit tax. We assumed that the company obtains only income, with no expenses, therefore the taxable amount is the gross income obtained. In order to benefit from the company's profit, the administrator allocates the net profit and has the obligation to pay the dividend tax; the tax rate on 31.12.2024 was 8%, and if the income obtained exceed the amount of 6 minimum wages, namely 19,800 lei, or 12 minimum wages, namely 39,600 lei, or 24 minimum wages, namely 79,200 lei, you have the obligation to pay social health insurance contribution related to these thresholds.

Actual income system (method) for the self-employed persons; in this case, an income tax of 10% is paid, the taxable basis is calculated as the difference between the income obtained and the paid expenses. If the taxable amount exceeds the amount of 6 minimum wages, namely 19,800 lei, or 12 minimum wages, namely 39,600 lei, or 24 minimum wages, namely 79,200 lei, or 60 minimum wages, namely 198,000 lei, you also have the obligation to pay the social health insurance contribution (SHIC) and the social insurance contribution of 25% (SIC) related to these thresholds.

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