Annals of the Academy of Romanian Scientists
Series on Economy, Law and Sociology
ISSN 2067-5704 Volume **1**, Number **1/2009** 79

GRANTING AND TAXING THE DIVIDENDS POLICIES

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Rezumat: *Investitorii, ca membri fondatori ai unei societăţi comerciale (companii) ori cei ce li se alătură acestora ulterior, sunt interesaţi în eficienţa plasamentelor capitalurilor făcute de ei, de performanţele entităţii intrată în jocul pieţei concurenţiale.*
Dezvoltarea continuă, creşterea valorii întreprinderii şi, în acelaşi timp, rentabilitatea acesteia în cadrul fiecărui exerciţiu financiar devine factorul de interes major al acţionariatului, acesta fiind influenţat de "randamentul capitalului" şi distribuţia acestuia.
Randamentul capitalului, exprimat prin intermediul profitului din care se alocă dividende, mărimea acestora şi politicile statului în sfera impozitării constituie motivaţia de menţinere, de sporire sau de migrare a acţionariatului (investitorilor în capital).

Abstract: *Investors, as founding members of a trading company, or those who join them later, are interested in the efficiency of their capital investment, in company's performances, which entered into the game of the competing market.*
The continuous development, growing the company's value and, in the same time, its profitability on each financial year, become the shareholders' major interest factor, which are influenced by the "return on capital" and its distribution.
The return on capital, represented by the profit from which are allocated dividends, their size and state's taxing policies, is the shareholders' (the investors in capital) reason to maintain, to increase or to migrate.

Key words: dividends, profit, dividend's taxing, return on capital

JEL classification: M21, P47, E62, D72.

The stage of the world's economy, having overdeveloped and underdeveloped countries, or countries in the transition or post transition period to a competitive or social market economy, shows the global order division tendencies, fact that arises vanities, rages and, consequently, the growth of the uncertainty.

But, in this Universe that we, the people, know and perceive, what is absolutely certain? The relativity is overall in policy, in economy, but mostly in the human, social and financial-economics relations.

On the basis of so many "uncertainties", so generously given by the day-to-day living, the enterprising spirit, the necessity to invest the resources which can generate future profits, was, is and will be active, being the foundation of the society's progress.

Profit, that positive value that remains after covering the operating, the financial and the extraordinary expenses from incomes acquired in one financial year, is the element that provides at least three major requirements:

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a) to reinvestment a part in order to consolidate and develop the company;

b) to cede a part for the public budget, in order to cover the state's general needs;

c) to pay the investors which risked their money for the constitution of the company's share capital.

About this last destination of the profit, but the most desired, we will fill the pages of this work.

1. The remuneration of capital by dividends and their taxation policy in Romania

1.1 The remuneration by dividends

The dividend represents a part of the profit that a ***joint - stock company*** obtains. It represents also that part of the net profit of a joint stock company, that returns to one share, to one founder's share or to one industrial share.

Recalling that the profit ***is not a payment that has to be made for getting resources***, but it ***is a balance*** that remains from incomes after ***all*** the costs have been covered, we can certainly say that the dividend also is a balance distributable to owners of the share capital.

As results from what was presented above, ***the right to take possession of a part from the distributable profit*** is different, accordingly both to the type of the shares and the owners.

Thus, the commercial law states ***the place and the rights of the founders***:

- The Constituent Assembly will decide the share of the net profit appropriate to founders of a company started by public subscription;

- the share of the profit appropriate to founders ***can not exceed 6% from the net profit*** and can not be granted for a period that exceed 5 years from constitution of the company;

- in case of increasing the share capital, the rights of the founders will be exercised only over the profit corresponding to the initial share capital.

The shares, having an equal value, confere equal rights to possessors.

Beside the common shares, a company can issue ***preferential shares bearing a priority dividend confering no right to vote***, owners of such shares having the right:

a) to a priority dividend from the available profit of the financial year, before any draw;

b) that any ordinary shareholder has, except the right to participate and to vote in The Shareholders' General Assemblies.

About the preferential shares, the following particularities can influence the distribution of profit as dividends:

- the shares bearing a priority dividend cannot exceed a quarter from the share capital and have the same value as the ordinary shares;

- the representatives and the managers of the company cannot own shares bearing a priority dividend confering no right to vote;

- the preferential shares and the ordinary shares can be converted from one category to another, accordingly to the decision of The Shareholders' Extraordinary General Assembly.

A very important thing to bear in mind is that the attribute for establishing proportions between the type of the shares, the conversion of the shares and the ***assessment of the dividend***, is incumbent, exclusively, to The Shareholders' Extraordinary General Assembly – respective The Shareholders' Ordinary General Assembly.

Recalling that the shares have equal values and confere the same rights to shareholders, that mean that the profit's distribution for the owners' remuneration will be staged as follows:

a) the quantize of that part from profit distributable to the founders;

b) the measure of the sum distributable to the owners of the preferential shares;

c) the establish, by subtraction, of the profit distributable to the owners of ordinary shares.

Resuming the staged emphasized above, result that:

a_1) the part from profit appropriate to founders is shown by the formula:

$$\sum Pf = \frac{Pn * 6}{100}$$

where, ΣPf is the sum from the profit appropriate to founders, *Pn* is the net profit of the company; 6 – the maximum allowable percentage.

For one founder, the remuneration will be set according to the weight that he owns in the initial share capital:

$$\sum P/f = \frac{Pf * k}{100}$$

where, Σ*P/f* is the sum from the profit appropriate to ***one*** founder; Σ P/f is the sum from the profit appropriate to ***all*** founders; *k* is the percentage of the founders in the constitution of the share capital.

a_2) the distributable sum for preferential shares will be determine by the formula:

$$\sum Dp = Nap * Dfa$$

where Σ*Dp* - the sum of the preferential shares; *Nap* - the number of the preferential shares; *Dfa* - the fix dividend for a preferential share.

a_3) In order to determine the profit distributable to the owners of ordinary shares, we have to follow next stages:

- the determination of the remaining distributable part from the profit, calculated by subtraction from the total distributable profit, the parts allocated for remuneration of the founders (for the first 5 years from the constitution of the company) and the fix dividends appropriate to preferential shares:

$$\sum Do = \sum Pnr - \left(\sum Pf + \sum Dp\right)$$

where, Σ*Do* is the sum appropriate to dividends for remuneration of the ordinary shares; Σ*Pnr* is the sum of the net profit distributable for remuneration of the shareholders; Σ*Pf* is the sum of the profit appropriate to founders; Σ*Dp* is the sum of the preferential dividends.

- the determination of the dividend appropriate to remunerate one ordinary share as follows:

$$\sum D/ao = {\sum Do} \Big/ {\sum Nao}$$

where, Σ*D/ao* is the sum of the dividend appropriates to ***one ordinary share***; Σ*Do* is the sum established for dividends appropriate to ordinary shares; *Nao* is the number of the ordinary shares.

In practice, the persistent question is about the size of the part from the profit appropriate to remunerate the owners considered as private persons, and the size of the part allocated to finance the maintenance and development.

It is clear that the shareholders will remain faithful to the company only if it reaches an equal or higher profit efficiency than other companies. In that case, beside the managerial policies regarding the company development and consolidation on the competitive market, the policy regarding the shareholders' stability and stabilization have to consider their competitive remuneration.

1.2. The Dividends taxation

In the Romanian legislation meaning, **the taxable mass representing the dividend, include any distribution expressed in money or in kind**, appropriate to shareholders, from the profit established by the annual balance sheet and by the profit and loss account, proportional to their participation in share capital.

The taxing quota, settled by the Fiscal Code, is 10% from the dividend allocated to a legal person shareholder and 16% from the dividend allocated to a natural person shareholder.

The settlement and levying used method is that of ***pay - as - you - earn (P.A.Y.E)***, consisting in that the ***subject of taxing*** (the tax payer) is the shareholder from whose dividend is withheld the tax, and the ***tax payer*** is the company that granted the dividend.

The term of tax payment becomes due ***once the dividends are paid*** to the shareholders.

The dividend tax is part from the category of the fiscal incomes as direct taxes and ***is due to the state budget***.

The legislated particularity that encourages the state, but ***disagreed*** by the payer (the company) is that "in case of distributed dividends, ***but unpaid*** to shareholders by the end of the year when the balance sheet was approved, ***the term of payment*** of the dividend tax is ***until 31st of December in that year***."

In other words, ***the double taxing*** of the income proceeded from the same source (the profit) is, in that case, more obvious, because, thus the entitled subjects did not obtained their rights, these are already taxed.

The ***payment of the dividend tax*** is made ***in Romanian Lei***. If the payment of dividends is made in currency, the tax, the delaying price and the penalties are ***transferred in Romanian Lei, which result from currency exchange, using the currency rate of exchange valid in payment day.*** The law that regulate the budgetary income resulted from dividend tax does ***not contain fiscal facilities as exoneration, reductions or postponements of payment***, but the sanction consist in delaying penalties that are measured beginning with next working day after the payment term expired and with the effective tax payment day, inclusive.

2. The fiscal policies in European and other countries regarding the dividend taxation

Dividend taxation according to corporation's and natural person's taxing system, with differences specifically to the states, didn't exclude, but contrary, considered the reliefing system regarding the payment of dividend tax, respectively the ***reductions, the partial taxation and taxation's elimination.***

The sensitive matter, considered by the European communities' and other developed countries' governments, ***is to reduce the double taxing in economy and more, to eliminate it.***

The table and the explanations below show the concrete manners to operate with such fiscal policies, so they were published in "Inventory of taxes levied in the member states of the European Communities, 15th edition, commission of the European communities, 1993".

<table>
<tr><td>A. DOES NOT REQUIRE REDUCTION, OR THE REDUCTION IS VERY SMALL</td><td colspan="4">B. THE REDUCTION OF DOUBLE TAXING IN ECONOMY
At corporation's level
At shareholders' level</td><td colspan="2">C. THE ELIMINATION OF DOUBLE TAXING IN ECONOMY
At corporation's level
At shareholders' level</td></tr>
<tr><td>Classic System</td><td>Rating System</td><td>Reduction System</td><td>Taxing System</td><td>Assistance Partial Plan</td><td>Zero Instal-ment System</td><td>Total Taxing System</td></tr>
<tr><td></td><td>Small taxing instalment for the distributed income</td><td>Partial reduction of payment the dividends</td><td>Partial credit for the corpora-tion's taxes</td><td>Partial credit for the internal shareholders</td><td>Zero tax for the distri-buted income</td><td>Total credit for the corpora-tion's taxes (taxing system)</td></tr>
<tr><td>Belgium (2), Luxembourg, Netherlands, Switzerland, U.S.A.</td><td>Germany (3)</td><td>Iceland (4)
Spain (5)
Sweden (6)</td><td>France (7)
Ireland
Great Britain</td><td>Austria (8)
Canada
Denmark,
Iceland (4)
Japan
Portugal
Turkey (10)</td><td>Greece
Norway</td><td>Australia
Finland
Germany (3), (9)
Italy
New Zealand
Turkey (10)</td></tr>
</table>

NOTE - assistance means help, aid or relief

The typical of the policies presented above can be outlined in detail, as follows:

1. In most of these countries (and in those who allow discounts for corporations), the shareholders benefit by ***discount*** consisting in ***exonerations for received dividends***.

2. Belgium passed from an ***assistance*** system for the shareholders to a ***classic system***, but it continues to supply assistance to those shareholders who invest their dividends in their own professional activity (using the attenuation method for encouraging the deduction more than the distribution).

3. The systems presented in columns 2 and 7 are both operable in Germany.

4. These reductions for paid dividends can, sometimes, entirely counterbalance both the corporation income tax and the personal income tax, especially for dividends larger than 15% from capital share. Iceland is placed in columns 3 and 5.

5. Spain is placed both in column 5 and in column 3, but considering that the credit granted to shareholders is only 10% (much smaller than the countries presented in column 5), it was not considered for ***minimus*** reasons.

6. The decrease of the paid dividends can sometimes lead to elimination of the corporation's tax (for dividends appropriate to recently issued shares, maximum 10% per year from the issue's value, the maximum being equal with the total value of the issue).

7. France is often described as approaching more probably the elimination than the attenuation of double taxing, as we can see from the table, because while the corporation's tax rate was substantially reduced, the credit value didn't change, but on the other side, in 1989, the retained profits became the subject of lower rates than the distributed profit (currently 34%, respective 42%).

8. Because in 1989 the dividends paid to residents were taxed with ½ from the ordinary rate, the divided rates system (column 2) was eliminated from that year.

9. Germany belongs to the extreme right side considering the overcompensation of the dividend double taxing, eliminating the whole tax applied to shareholders and taxing the distributed profits to a corporation's rate, lower than the retained profit. On the other side the shareholders get no credit for paying the local business tax.

10. There's no personal tax applied to the distributed dividends beside the profit, which arose corporation taxes, that means that the assistance is sometimes partial and sometimes complete. That's why Turkey is presented both in column 5 as in column 7.

3. How do we see the dividend taxing

The dividend, as we defined it in this work, is the **residual payment** made by company in order to remunerate the shareholders.

The residual payment proceeds from the remained balance, after that from the gross profit was subtracted and paid the owned tax, as well as the other destinations. It is clear that taxing the total gross profit, the remained net profit will be distributable as net parts, that means already taxed.

The dividend, being that part from income (profit) that passes from legal person's to natural person's (the shareholder's) possession, is considered as natural's person primary income and that's why it is taxed as any other personal income. Of course, that way of approaching the matter is convenient to state and compulsory by force of law, but is obvious that it is not agreed by those who are entitled to be remunerated by dividends.

When, generally speaking, the incomes of natural and legal persons are taxed only once in proportion they are formed, that residual income that is the dividend is taxed twice, even three times, if we accept the complete circle of investment. Let us explain:

a) the subscribed and paid - up capital, at company's constitution or later, by buying shares, comes from an initial income (wage, rent, dividend) that was certainly taxed;

b) the profit, from which proceeds the dividend, is first taxed and then the rest (the net profit) is available to be distributed inclusive for owner's remuneration;

c) finally, the part distributed as dividend is taxed by source restraint, before the shareholders take possession of it. As we shown before, in Romania even there is no paid dividend by the end of the year, the tax becomes exigible and has falling due the end of that year.

Even if no third times taxing of dividends, but certainly double taxing was and remained one debating matter, each country adopting appropriate solutions, as we illustrated in this work. In USA, consequently to fiscal reform that begun in 1986, it was considered that impulsing the investments have to be based mainly on partial elimination of the double taxation of company's and individual's incomes, the companies being entitled not to include in taxable income the part from profit distributable for owner's remuneration by dividends.

Indifferent of national financial stare, the fiscal policies have to consider the stimulative aspect, the challenge to invest and so, the lately growth of the taxable mass by enlargement of the economical base.

From the methods practiced for taxation the companies and their shareholders incomes, is required to chose or combine those which satisfy the necessities of a plenty budget and those stimulent for whose are forming the base of the budgetary incomes.

In order to tax the companies' incomes and the distributed dividends, can be operable the next methods:

a) the companies' right to exclude from the taxable income that part from profit distributed to shareholders as dividends. The immediate and natural consequence is materialized both in stimulating the shares acquisition, especially for new constituted companies and for those being in consolidation process, and in growing the investment potential in new and performant techniques ment to ensure a privileged place on the competitive market. Elimination of distributable profit as dividends double taxing, as the practice proved, is a certain mean to stimulate the technological renewal, more efficient than the fiscal discounts allowed for investments.

b) is taxable only that part from profit distributed for dividends, while the net part from profit, remained at company's disposal for development, for increasing the capital, for employee's participation on profit and for building up the own financing resources, is tax exempted. The obvious advantage of these fiscal method is to challenge the company to invest the achieved profit that remained at its disposal, in new investments usuable for own economic grow.

c) is taxable only the part from profit that remains at company's disposal, being no taxable the dividends distributed to the shareholders.

d) the separate taxation, first of the part from profit distributed as dividends and then of the part from profit remained at company's disposal.

e) in the classic system of the fiscal policies, is taxable the total gross profit, the tax's sum becoming the first exigibility and then, separately, the part from profit distributed to shareholders as dividends, the resulted taxable sum becoming the second exigibility.

This system, practiced in countries as Sweden, Switzerland, Belgium, Netherlands, Luxembourg and taken over in Romania, shows that the part from profit distributed to shareholders is taxable twice, once at the company (total gross profit) and twice at shareholders (as dividend).

Indifferent what dividend and fiscal policies feasible to dividend are considered, we think, as a final conclusion, that ***the return on capital and the satisfaction of the remunerative expectations of the shareholders by dividends*** are the base piles of companies' living on the market, having great impact over micro, mezo and macroeconomic stability.

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Annals of the Academy of Romanian Scientists
Series on Economy, Law and Sociology
ISSN 2068-200X Volume **1**, Number **1/2009**

THE EMERGENCE OF INTELLECTUAL CAPITAL IN A KNOWLEDGE-BASED SOCIETY. INVESTMENT IN PEOPLE AND SKILLS

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Motto:
"Society's most important investment is in the education of its people.
We suffer in the absence of good education: we prosper in its presence."
Donald J. Johnston[2]

Rezumat. *Acest articol subliniază importanţa investiţiei în educaţie ca forţă motrice pentru creşterea şi dezvoltarea economică sustenabilă pe termen lung. În contextul societăţii bazate pe cunoaştere se amplifică rolul activelor intangibile de tipul capitalului intelectual, creativităţii şi inovaţiei, ca surse esenţiale ale avantajului competitiv. De vreme ce ingredientul secret al succesului în afaceri constă în a investi în capitalul uman, se pune întrebarea de ce atât de puţine companii din România răspund provocării de a face astfel de investiţii? Să se datoreze cumva explicaţia faptului că o astfel de investiţie este o investiţie cu efecte propagate pe termen lung, în timp ce companiile contemporane gândesc predilect pe termen scurt? Investiţiile în oameni şi în capabilităţile şi competenţele acestora sunt esenţiale şi la nivelul Uniunii Europene, care a declarat drept ţintă strategică prioritară ca, până în anul 2010, să devină "cea mai dinamică şi competitivă economie bazată pe cunoaştere".*

Abstract. *This article emphasizes the importance of investment in education as a driving force for economic growth and sustainable development in the long term. In the context of knowledge society the role of intangible assets like intellectual capital, creativity and innovation as key sources of competitive advantage is enhanced. As the secret ingredient of success in business is to invest in human capital, the following question arises: why only few companies in Romania meet this challenge of making this kind of investments? Can it be explained by the fact that this investment is an investment whose effects propagate in the long term while companies prefer contemporary thinking in the short term? Investment in people and in their capabilities and skills are equally essential at the European Union level as well by having stated that its strategic priority target is to become "the most dynamic and competitive knowledge-based economy by 2010."*

Key words: knowledge-based economy, knowledge-based organizations, workers who rely on knowledge, intellectual capital, investment in human capital, investment in education, investors in people.

We are living in one of the most exciting times in the history of civilization. In the last one hundred years, the world has rapidly evolved from an agriculture-based economy to a production-based economy and now we are in *a knowledge-based economy*. We have to face *a paradigm shift* towards a new type of society called *a*

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