

FARM DEVELOPMENT USING THE FISCAL LEVER

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Abstract: An agricultural entity, regardless of its size, seeks opportunities for development and consolidation both through internal, its own resources, and through external resources. The external resources raised are, without exhaustive listing, either direct, through capital raising, using the loan providers, bank loans, EU grants, public grants, leasing, factoring and other forms of borrowing or financing, or indirect, using taxation and specific legislation; we would like to elaborate the latter further in this paper.

Key words: external resources, taxation, specific legislation, development

INTRODUCTION

One aspect that a farmer should not neglect is to fiscally optimize his/her activity, even if (s)he is mainly concerned with the technical, managerial and marketing aspects of the business. By paying special attention to both taxation and accounting of its entity, as well as to the consultancy in this field, (s)he can boost the "reward" for all the work done either by increasing the profit or by reducing taxation. *Legem ignorare* as a Latin phrase says, may deprive him/her of privileges offered by favourable legislative and fiscal provisions.

MATERIALS AND METHODS

The methodology used in the research relied on the theoretical conception in the field, on data collection methods and techniques, on data processing methods and techniques, and on logical processes of analysis and synthesis (building up and systematising theory).

RESEARCH RESULTS

1. TAXATION OF NATURAL PERSONS

The taxation of natural persons and legal entities is structured and detailed in Law no. 227/2015 on the Fiscal Code.

The fiscal framework regarding the taxation of income resulted from agricultural activities is outlined in Title IV, Income Tax, in Chapter VII, art. 103-107.

Thus, the income from agricultural activities is defined as income obtained either individually or in a form of association without legal personality, from:

- cultivation of agricultural products individually
- exploitation of vineyards, orchards, fruit trees
- raising and exploitation of animals, including the income obtained from the valorisation of products of animal origin in their natural state

Regarding the revenues obtained from forestry and fish farming, the legislator mentions that these revenues are taxed according to Chap. II Income from independent activities, the income being determined in the actual income system based on accounting data, the taxpayers have the obligation to use and fill out the Register of fiscal records.

Exceptions and exemptions from income tax payment:

- the products collected from wild flora, excluding wood. In the latter case, only the income obtained from the exploitation and capitalization of wood with a volume of maximum 20 cm/year from forests owned by taxpayers are non-taxable income.

- products caught from wild fauna, except for the products made from the commercial fishing activity, situation in which according to the regulation in Chap. II, in the actual system

The income defined under this heading is non-taxable income within the limit set out in the table below:

Table 1.

Own processing according to the table mentioned in art. 105, para. (2) of Law 227/2015

<i>No.</i>	<i>Vegetable products</i>	<i>Area</i>
1	Cereals	up to 2 ha
2	Oilseed plants	up to 2 ha
3	Potato	up to 2 ha
4	Sugar beet	up to 2 ha
5	Tobacco	up to 1 ha
6	Fruit-bearing hops	up to 2 ha
7	Vegetables in the field	up to 0.5 ha
8	Vegetables in protected areas	up to 0.2 ha
9	Grain legumes	up to 1.5 ha
10	Fruit-bearing trees	up to 1.5 ha
11	Fruit-bearing vine	up to 1 ha
12	Fruit bushes	up to 1 ha
13	Flowers and ornamental plants	up to 0.3 ha
14	Medicinal and aromatic plants	up to 2 ha
	<i>Animals</i>	<i>No. of heads / No. of bee families</i>
1	Cows	up to 2
2	Buffalo cows	up to 2
3	Sheep	up to 50
4	Goats	up to 25
5	Pigs for fattening	up to 6
6	Bees	up to 75 families
7	Poultry	up to 100

The determination of income obtained from an agricultural activity is made on the basis of income standards. Income standards are established as follows: for vegetable products categories per unit area (ha), for animals per animal head, respectively for the number of bee families.

The income standard is reduced in proportion to the recorded loss

Both income standards and the data necessary for the calculation are established on the basis of a methodology approved by Government Decision by the public entities mandated by the Ministry of Agriculture and Rural Development. These calculation

methodologies receive applicability through the Regional Directorates of Public Finance having the task of publishing these income standards by the 5th of February of the year for which they are applied.

The income tax from agricultural activities is 10% [1] applied on the taxable basis resulting from the application of the annual income standard.

$$\text{Tax} = \text{total area/ha} - \text{exempted area/ha} * \text{annual income standard/ha} * 10\% [2]$$

The situations leading to the modification of the income standard may be the result of losses caused by unfavourable meteorological phenomena such as frost, hail, sleet, heavy rains, floods, and drought, epizootics, which affect more than 30% of the agricultural areas or the number of animals kept.

The damages are ascertained by a Commission appointed by County or Bucharest Municipality Prefect's Order, upon suggestion from the Executive Director of the County Agricultural Directorate or the Municipality of Bucharest. The commission is locally made up from a representative of the City Hall, an AIPA (The Agency for Interventions and Payment for Agriculture) specialist [3], a delegate from ANM (National Administration for Meteorology) [4], a specialist of the General Inspectorate for Emergency Situations and a representative of NAFA - National Agency for Fiscal Administration.

In case of recording losses found by a Commission established according to the provisions of art.106, par. 6 of Law 227/2015, the taxpayer proceeds to adjust the norm with the percentage of loss recorded in the Protocol, meaning the corresponding diminution of the norm. In this regard, a single rectifying declaration will be submitted, which will consequently reduce the amount of tax due.

Besides this form of aid granted by the state through the tax abatement mechanism, the active farmer who insures his crops, enjoys another support in force, granted through Sub-measure 17.1 [according to art. 36 and 37, of Regulation no. (EC) 1305/2013] - **Insurance premiums for crops, animals and plants**. This support aims to encourage the farmer to insure the crops through private insurance schemes and also to encourage the insurer to expand its scope of risks.

The support granted is 70% of the value of insurance premium for farms with an economic size of up to 11,999 SO [5]. The condition is that the insurance premium is actually paid by the farmer and it must be eligible.

In case of farms with an economic dimension greater than or equal to 12,000 SO, the support is 55% of the value of insurance premium actually paid if the eligibility condition is met.

Note: this support is granted to all active farmers, regardless of the form of organization, differentiated, taking into account the economic dimension of the holding.

According to art.107 of Law 227/2015, the taxpayer declares the cultivated areas in accordance with the declaration made to AIPA in the form called **The Single Declaration** [6] until March 15th of each year. The deadline for tax payment is March 15th of the year following that of income achievement.

Considerations: the income standard tax system has its advantages and disadvantages, as follows:

Disadvantages:

- being calculated on a basis defined by the legislator, it cannot be diminished by investments, expenses, or other cost-bearing items, as it would be calculated in the actual system

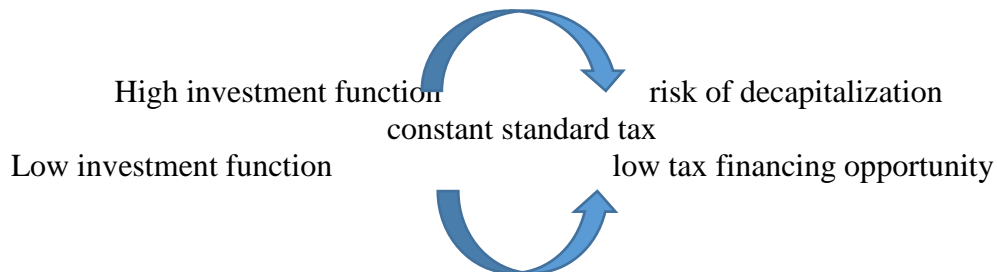
- whether the farmer is in profit or loss, the tax established on standard, under normal conditions of production, must be paid

Advantages:

- regardless of the profit realized, the tax remains practically unchanged, and it is not a variable function of the taxable base realized (receipts-payments, with the corresponding adjustments)

- in case of calamities or other causes that lead to a production reduction, the tax can be reduced, if these losses are proven.

Therefore, there is the risk that some farms fall into this form of taxation (income standard) and who do not have the freedom to choose it, to decapitalize it or to finance it indirectly through the taxation imposed by the legislator.



Basically, in the situation where a farmer would record a loss or a profit, he has the obligation to pay the tax, as this is a compulsory levy, not taking into account the size of the profit or the loss recorded by the entity.

2. TAXATION OF AGRICULTURAL COMMERCIAL COMPANIES FISCALLY CATEGORISED AS MICRO-ENTERPRISES

The fiscal code defines the micro-enterprise [7] as the entity that at the end of the previous year, (December 31st previous year) cumulatively fulfils certain criteria, such as:

- the realized income did not exceed the equivalent of 1,000,000 Euro, calculated at the BNR exchange rate as of December 31th, previous year
- the registered capital must be owned by persons other than the state and the administrative-territorial units
- did not submit the proceedings for dissolution followed by Trade Registry liquidation or to the law courts according to law;

The law establishes an exception from these provisions, namely, if the company has a registered capital of at least 45,000 lei and at least 2 employees, it can opt for the calculation of the tax according to Title II, profit tax. This option becomes applicable in the quarter in which the conditions are cumulatively fulfilled.

The tax rate is 1% if the micro-enterprise has at least one employee and 3% if it has 3 employees.

The tax base for the tax on the income obtained by micro-enterprises [8], without resorting to an exhaustive enumeration, taking into account the specificity of a company having an agricultural profile, represents the income from any source from which there are deducted:

- revenues related to the costs of stocks in progress
- revenues related to the costs of services in progress
- revenues from the production of tangible and intangible assets
- revenues from subsidies
- revenues from compensation given by insurance/reinsurance companies, obtained for the damages produced on own assets such as stocks or tangible assets

- the value of commercial discounts that are subsequently granted for invoicing and registration in account 709 "Commercial discounts granted"

At the taxable base, in order to determine the tax, the following are added:

- the value of commercial discounts received and granted following the invoicing. These are the reductions registered in account 609 "Commercial discounts received"

- the favourable difference between the income from exchange rate differences and the expenses from exchange rate differences. This difference is calculated cumulatively from the beginning of the year only at the end of the financial year

The tax on the income obtained by micro-enterprises is declared quarterly and will be paid by the latest on the 25th of the following month, the first month of the quarter following the quarter for which the tax is calculated.

The advantage of this tax system is that of alternative possibility. If an entity estimates that it will not make investments and will have no expenses, or that they are insignificant, then this tax system is favourable for it. If, on the other hand, it estimates or ascertains that the 16% profit tax is optimally fiscal, then by fulfilling the conditions for passing to the profit tax, it will be able to benefit from a more favourable fiscal system.

3. TAXATION OF AGRICULTURAL ENTITIES WHICH APPLY PROFIT TAX

The taxation of entities having an agricultural profile that applies the profit tax is regulated by Law 227/2015 on the Fiscal Code, art. 13- art. 46.

In principle, any entity that does not meet the conditions set out in Title III - Micro-enterprise income tax, applies the profit tax.

The tax rate is 16% and applies to the taxable Profit.

Taxable profit = total revenues - total expenses + non-deductible tax expenses + items similar to income - tax deductions.

Regarding the agricultural entities that choose or are obliged to apply this type of taxation, there is a facility provided in the Tax Code, namely the tax exemption of reinvested profit. The sine qua non condition for operating this facility is that the entity records profit.

The object of this facility is the new investments, used for the purpose of carrying out the economic activity, consisting of technological equipment, electronic computers, peripheral equipment, and etc. [9]. The facility is meant to support the entrepreneur for "saving" the cash flow, by not paying the profit tax during the fiscal period of putting the acquisition into operation. However, the facility is improperly called a facility; it is suspensory of exemption, because it can be regarded as a tax deferral and not as a genuine exemption. In this sense, art. 26 paragraph 5 of the same normative act, states the following:

- the reduction or cancellation of any provision/ reserve that was previously deducted, including the legal reserve, is included in the calculation of the fiscal result and is taxed as such, as taxable income or as other items similar to income. The situations that lead to their retreat as a component of taxable profit are: reserve distribution to participants in any form, increase of registered capital, distribution for loss coverage.

- par. 9 of the same article stipulates that the maintenance of assets until the liquidation of the legal person, the reserves will not be taken in the fiscal result calculation established upon liquidation.

Another provision that falls within the attention of the agricultural entity would be the fiscal treatment of stocks (raw materials, materials, goods, finished products,

production in progress, inventory items, and fixed assets) degraded or lacking from management accounting and non-taxable, including value added tax, under certain conditions:

- to be the cause of natural disasters or other events of force majeure
- to be the subject of an insurance agreement
- for qualitatively degraded goods, the proof of destruction is required; the evidence regarding the destruction of stock is fiscally valid and if it is done by own means and if it is carried out by specialized units.

Article 25 paragraph 3 states among expenses with limited deductibility:

- technological losses that are included in the own consumption norm for the manufacture of a product
- deductions, perishables, losses resulting from handling, storage. The normative act regulating the perishables is the GD 831/2004. [10, 15]

Technological losses are losses of stocks, raw materials, consumables, advanced in the production process and irreversibly lost as a result of causes dependent or independent of farmer's will. They are caused either by technology error, human errors; technological losses caused by out-dated technology, with an advanced degree of physical wear, personnel that are not adequately qualified.

The consumption norm to which the normative act refers is the maximum limit allowed for deducting these expenses. Beyond this limit, the entity is not recognized these expenses when calculating the profit tax, being considered non-deductible tax expenses.

The consumption norm represents the specific consumption to which technological losses are added. Each entity, through its specialists, by using internal procedures and taking into account all production factors involved in the manufacturing process establishes its own consumption norm, which takes into consideration these aspects and which is included in the technological sheet.

In completing the normative act mentioned above, we also invoke the provisions of OMFP 1826/2003 regarding the management accounting and point 79 paragraph (1) and paragraph (2) of OMFP 1802/2014 regarding the Accounting Regulations that specify that in the cost of goods, works and services are not included but must be recognized as cost of the period, the following elements:

- material losses, workmanship, other costs recorded above the normally admitted limits, including losses due to waste
- storage costs except those made for the purpose of moving to another manufacturing phase and those for the purpose of bringing the stock to the place and state in which they are located
- administration and sales costs
- fixed administration not allocated to cost; allocation of fixed administration is made on the basis of occupancy degree of production capacity (Occupancy degree = Actual activity / Normal activity, and Fixed productive costs = Fixed costs * the degree of occupancy of production capacity - a rational allocation of costs in the final production cost is achieved).

As a conclusion, from the provisions of normative acts mentioned above, the fact that the technological losses included in the consumption norm approved by the entity through internal procedures, is included in the structure of production cost being a selling cost for the production sold.

At the same time, this tax system is fiscally the most "honest", treating the entity with a tax calculated on a taxable base resulting from the difference of all incomes and expenses committed in its economic activity.

4. THE AGRICULTURAL COOPERATIVE

Law 21/2019, the law on agricultural cooperation, in addition to Law 566/2004 in conjunction with the optimization of the farm from the point of view of taxation type, is meant to support the farmer through the contribution created by the provisions of these normative acts.

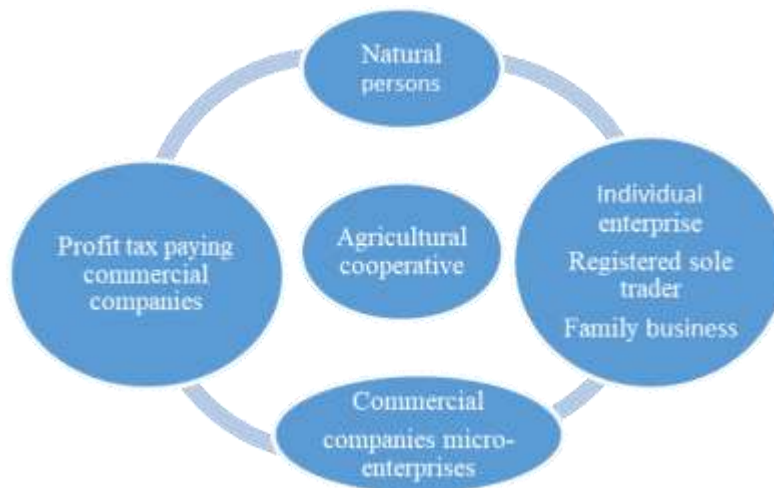


Figure 1. Types of members in an agricultural cooperation

The cooperative is a concept of association made up of at least 5 members, called associates and can have an unlimited number of members.

The objectives that a medium-sized farm, a farm member of a cooperative should have:

- tax burden reduction
- the actual maximization of profit
- farm engineering
- creating a solid foundation by using these advantages, as a starting point for a sustainable business, after 5 years, seen as a *Grace Period*.

The law of agricultural cooperatives is established by observing several guiding principles:

- caring for the local community - a principle that pursues sustainable development
- the relations among all cooperatives existing at the local and national level by acting inter-cooperatively on horizontal and vertical in order to develop and consolidate this lucrative form
- an educational principle, which aims at developing through members' education, of the governing bodies, of each human factor involved, its purpose being that of informing and training so that the value of the cooperative increases through the intrinsic factors that bring their contribution accordingly
- agricultural cooperatives are based on independence and autonomy, principles underlying the cooperating members' agreement and consensus
- another principle without which the cooperative would not find any purpose, is the economic principle, by which, the cooperative members are entitled to compensation, proportionally with the participation in the establishment of this form of organization in the form of dividends. From the net profit, funds are allocated for cooperative development,

for supporting activities approved by the members or for rewarding the work done within the cooperative.

- the cooperative members choose their representatives who will deal with decision making and the establishment of guiding policies based on the principle of democratic control

- a principle underlying this form of association is that of voluntary association, without any discrimination

Facilities [11, 14]:

- agricultural cooperatives that process agricultural products, those that produce or market genetic material, those that have reproduction or breeding activity, are exempted from paying the profit tax for a period of 5 years from the date of entry into production for the newly established ones and for a period of 5 years, calculated starting with the month following the entry into force of this normative act, in the case of those previously established. The newly established cooperatives are exempted from the date of entry into production, for a period of 5 years from the payment of corporate profit tax.

- members' exemption from tax payment on incomes obtained by micro-enterprises and natural persons constituted in one of the forms provided by GO 44/2008 with subsequent modifications and completions by Law 182/2016, for the production valorised through/ or to the agricultural cooperative.

- are exempted from tax payment on real estate property (buildings, land) used to obtain agricultural production and used through/or to the agricultural cooperative; the same provisions also apply in the case of registered sole traders, individual enterprises, family businesses, for the assets that represent special-purpose assets. The exemption granted is applied under the condition, in the sense that it is only applicable if it has been valorised, in the year preceding the one for which the taxes are due, to/ through the cooperative at least 50% of production obtained.

- the granting of these facilities under the condition, respectively, exemption from profit tax payment, takes into account the cooperatives established before the appearance of this normative act, which achieved at the end of the previous year a turnover of up to 3 million Euro, calculated at NBR exchange rate since the closing of the financial year in question.

- Other specification that lead to the elimination of exemption and the application of profit tax, refer to the cooperatives that are voluntarily liquidated, before the 5 year-period, which is considered to be the grace period.

In conclusion, this form of organization offers small-to medium-sized farmers, the definite possibility of development through extrinsic forces, creating the necessary start that after the "grace period" of 5 years has passed, they can develop using their own forces. Another advantage, besides the fiscal one, is given by the members' ability to negotiate better purchase prices for inputs as well as better selling prices, as a result of sharing the production, the larger delivered quantity can offer them a much stronger negotiating position.

5. THE STIMULATION PROGRAM REGARDING YOUTH EMPLOYMENT IN AGRICULTURE, AQUACULTURE AND THE FOOD INDUSTRY

MADR (Ministry of Agriculture and Rural Development) creates an active tool for engaging youth in the fields of agriculture, aquaculture and food industry.

This measure is part of the incentive program regarding the employment of young people in agriculture, aquaculture and the food industry. It should be mentioned that this

support is only granted for a period of 12 months. However, we believe it is a measure to be taken into consideration and to take advantage of its benefits especially for beginning farmers.

Therefore, Law 336/2018 brings another support to the farmer who needs labour force.

The cumulative conditions in order to receive support regarding the employee are the following:

- youth employment with individual employment contract, for an indefinite period or for at least 12 months, full time, in compliance with the provisions of Law 53/2003 on the Labour Code;
- the support can only operate if the farmer employs at least 2 young people, on newly created or existing jobs;
- *the phrase young beneficiary* covers persons aged up to 40 years old included;
- the employee must not have benefited from another support upon conclusion of an employment contract or must not have been employed at the same employer at least 12 months before joining this Program;
- During the whole time period of this Program, the employee benefits from exemption from the payment of income tax;

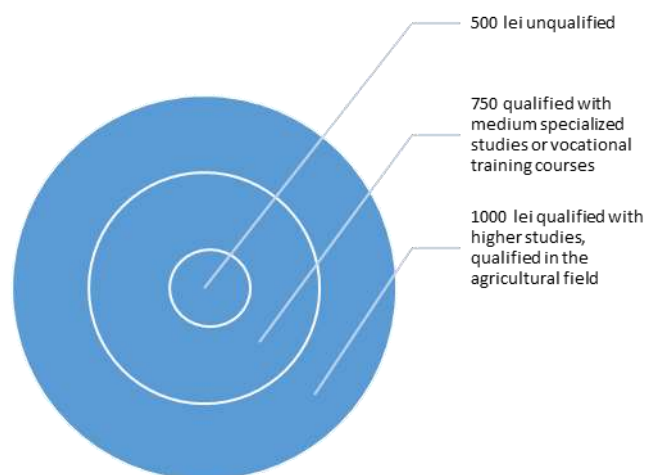


Figure 2. Support granted to farmers when employing young people

In order to be eligible, the employer must also fulfil several conditions:

- it must be registered according to the Romanian Laws (the registration documents with the Trade Register is the proof);
- to carry out activities in the field of agriculture, aquaculture, food industry (the proof is represented by the documents through which the corresponding NACE (CAEN) code was activated, respectively the confirmation of company details);
- not to have debts to the state Budget, the Local Budget, neither on the head office, registered office, nor on the secondary offices;
- Not to be in forced execution procedure, bankruptcy, judicial reorganization, dissolution, liquidation, etc. [12];
- Employs for a period of at least 12 months, full time and is obliged to maintain the number of newly created or existing jobs at the time of accessing this Program;

Program enrollment can be done until the end of 2020. Documents [13, 16] are to be submitted to the County Agriculture Directorates or to the municipality of Bucharest, under the supervision of the Ministry of Agriculture and Rural Development.

Through the advantages offered, this incentive measure is a rather modest measure. However, employers, especially the beginners in the field, can apply for this measure, the fiscal burden as regards salary matters being lighter. Employers with seniority in the field already have a complete staffing scheme, therefore, the measure is superfluous, one might say. Moreover, some employers could create the appearance of employment in order to benefit from these facilities, as it is well known the unethical behaviour some farmers operating in the agricultural field can prove.

CONCLUSIONS

The fiscal measures offered by the legislator in the form of aids, subsidies, favourable legislation, tax system, indirectly contribute when an entity with agricultural activity is developed.

The extent to which the farmer uses all these fiscal levers depends on his interest to find the best fiscal solution for his enterprise, to efficiently manage each resource.

Consultancy within the agricultural field is meant to make up for the farmer's very precious time, to give him the most appropriate solution, customized on his organizational and functional structure and to guide him towards the best fiscal solution.

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