

The Legal Nature of the Notion of Income

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Abstrac: *In communication, the authors emphasise the legal nature of the notion of income underlying the economic activity of entrepreneurship and which is not clearly regulated in national law. The problem discusses various doctrinal views on income forms: factorial, personal, profit, economic and legal. The key idea for solving this situation is that lawyers and economists in drawing up legislation in the field must work together. The authors come up with a comparative analysis of the national legislative framework in the field, highlighting different aspects. In conclusion, there are new suggestions and proposals for the improvement of national legislation.*

Keywords: *the legal nature of the notion of income, economic, legal aspect*

Introduction

Article 1 of Law no. 845 of 03.01.1992 on entrepreneurship and enterprises, defines that entrepreneurship is the activity of manufacturing production, execution of works and provision of services, carried out by the citizens and their associations independently, on their own initiative, on their behalf, at their own risk and under their patrimonial responsibility in order to ensure a permanent source of income [1]. From the content of this provision, it appears that the purpose for those who practice the activities highlighted in the law is the permanent income. In the doctrine several definitions of the concept of income are brought. Thus, the revenues represent the financial resources formed as a result of the marketing of products, services, works executed to other economic agents; Revenues appear as a result of spending [2, 99]. Any income earned can be consumed in whole or in part. If partially consumed, the income is divided into consumption and savings.

The economy consists of a multitude of interdependent units: family economies, businesses and numerous public bodies and entities. The family economy decides on its own, how much they want to buy and work, while businesses decide how much to produce and sell and what volume of workforce to employ.

Family households own the following factors of production: labour, land and capital that they provide to businesses that will use it to produce goods and services.

In order to facilitate the understanding of the economic and legal concepts of income, profit, consumption, savings, expenses, we will first analyse a very simplified economic activity, compared to real life. [3, 67-80]

The model of a simple economy is based on the following assumptions:

1. Within the economy there are only two categories of economic agents: family households and businesses.
2. Family households are economic agents that: own production factors; buy all final goods and services from national enterprises;
3. The company is the economic agent who: does not own production factors, buys the productive factors from the family households; sell to family households the goods and

services they produce; pays from the income obtained the services of the production factors; it has a production equal to the sales; it has no investments or depreciation.

In this economy the total size of the payments made by the individual households is equal to the value of the current production.

As the output of individual households is equal to the value of current sales, the money owed to businesses is redistributed to households in the form of salaries, profits, interest and rents. [4, 323-324]

It is necessary to emphasize that any production activity gives rise to income receipts of equal value, in the form of salaries, interest, profits that constitute the value added by the economic agent. Analysing the work "Political economy" of the university professors Costache Sandu and Niță Dobrotă we established that the satisfaction of the personal and collective needs of the people have as source the incomes obtained by the individual and aggregate economic agents. These incomes take the following forms: disposable income, personal income and national income.

The disposable income represents the amounts of money collected by private individuals who dispose of them according to their preferences by adding to the disposable income the personal taxes paid to central, federal and local administrations.

National income represents the sum of national income to which the following elements are added or subtracted.

- a) add the profits obtained by the joint-stock companies, the contributions for social insurance, and the salary surpluses (the salary surplus represents the positive difference between the salaries to be paid and those actually paid);
- b) from the obtained result, the transfers made by the enterprises and the state, the interest paid by the state, the interest on the consumer loans and the dividends are deducted;
- c) the resulting size is corrected by changing the stock evolution (plus or minus).

The national income is subject to the distribution process, which comprises two distinct stages, distribution (primary distribution) and redistribution (secondary distribution). The mechanisms and modalities for carrying out the distribution of national income have certain particularities from one country to another, especially regarding their destination and weight. [5, 98]

In the countries with the market economy, the national income is distributed in different proportions, between the owners of the production factors in the form of wages, interest and rent. Some of these revenues are included in the redistribution process, taking the form of income tax and other deductions. These are taken over by the public power and constitute sources of budget revenues, intended to cover the expenses related to education, culture, health, defence administration etc.

So, based on the above, we come to the conclusion that both in the legislation and in the legal, economic specialty literature of the Republic of Moldova there is no single definition of the notion of income, profit, profit, from which we propose the following definitions:

1. The income are those gains obtained by natural or legal persons as a result of the economic activity.
2. Depending on different criteria, different forms of income are highlighted.
3. Profit is a form of income that can come from different sources.

Definitions of the Concept of Income

We meet the notion of income with its various companies in the Instruction of the State Tax Inspectorate, regarding the calculation and payment of the income tax by the persons who practice the entrepreneurial activity from 29.01.2001, approved by the Ministry of Finance and the Ministry of Justice of the Republic, which makes a comment on the Fiscal Code. Thus p. 12 of the Instruction provides that, art. 18 of the Fiscal Code, the gross income includes:

1. the income derived from the entrepreneurial activity, from the professional activity or from other similar activities.

The income from the entrepreneurial activity represents the income obtained by the taxpayer following the conduct of the entrepreneurship activity in accordance with the Law on entrepreneurship and enterprises no. 845-XII of 3.01.92.

The income from the professional activity represents the income obtained by the taxpayer following the professional activity, provided by the legislation in force. As an example, it serves the income from the activities of notary and lawyer exercised under the Law on the notarial act and the Law on the law respectively. The income from other similar activities represents other types of income not indicated in art.18 of the Fiscal Code.

According to art. 5 point (16) of the Code, the income derived from the professional activity or from other similar activities, for taxation purposes are considered as income obtained from the entrepreneurial activity;

2. the income from the activity of the companies obtained by the members of the companies and the income obtained by the shareholders of the investment funds, according to the provisions of cap. 9 of the Code;
3. the income from the leasing of the property in accordance with the Law on the lease in agriculture. In accordance with the Law on the lease in agriculture, any owner of the Republic of Moldova with the status of natural or legal person benefits from the right to lease goods. The lease is allowed in all branches of the national economy. Business assets of all organizational-legal forms and types of property can be leased.

It can be rented: land and other natural resources, enterprises, organizations, units of enterprises and organizations, buildings, installations, rooms, machinery, agricultural and other techniques, means of transport, inventory, instruments, other material values.

According to art.7 of the Law on the lease in agriculture, the basic document, which regulates the relations between the lessor and the lessee, is the lease, which is concluded in writing on a certain term, but not more than 99 years;

4. the capital increase, which is determined according to chapter IV of this Instruction;
5. capital increase over capital losses, not taken into account in other types of income. This type of income includes the income obtained from the realization (removal from use) of the assets not included in the capital assets category, according to art. 37 paragraph (2) of the Code, and used in the business activity (entrepreneur), for which the wear is calculated, which is deducted from the gross income.

According to art 27 paragraph (2) of the Fiscal Code, the means obtained from the alienation of the fixed assets refer to the reduction of the value base of the respective category of property. If the indicated reduction leads to the end of the management period to a negative result per property category, then this result is included in the income, and the value of the respective property category at the beginning of the corresponding management period is zero.

For the property which, according to the Decision of the Government of the Republic of Moldova no. 1218 of December 31, 1997, it is included in category I of property of fixed assets (buildings, buildings), the result from their realization (increase or loss) is determined separately on each object separately, and for the fixed assets included in categories II- V the result is determined entirely by category (group).

6. the income obtained in the form of interest. Interest, income in the form of interest - any income obtained according to claims of any kind (regardless of the manner of preparation), including income from money deposits.

Interest income can be obtained from:

- granting loans;
- holding bonds or other securities;
- depositing the money in the deposit accounts and other bank accounts;
- overpayments to taxes, taxes and other obligations towards the budget.

The income includes the entire amount of the interest received, regardless of the form of the receipt: they have been capitalized (for example, in deposits) or have been directed to the payment of debts, etc.;

7. Royalty - regular reward (payment) obtained from the use of non-material assets or from the right to use them, as well as from the right to use natural resources.
Intangible assets according to SNC 13 "Accounting for intangible assets" means non-pecuniary assets that do not take material form, controlled by the company and used for more than one year in the production, commercial and other activities, as well as for administrative or teaching purposes (rent) to legal and natural persons.

Intangible assets include: patents, trademarks and service marks, licenses, know-how, copyright, franchises, computer programs, industrial drawings, samples, copyright, movie rights and others;

8. the income resulting from the non-payment of the debts by the economic agent in the cases of expiry of the limitation period, except when the formation of this debt is a consequence of the insolvency of the taxpayer, declared by the decision of the court.
9. state endowments, bonuses and prizes, which are not specified as non-taxable in the laws establishing these payments;
10. the amounts obtained from the agreement (convention) of non-engagement in the competition activity. For example, to this type of income can be attributed the income obtained by the taxpayer for the agreement to limit the activity of entrepreneur or to liquidate the company according to the contract (the agreement), concluded with the competitors (partners);
11. dividends obtained from a non-resident economic agent;

Dividend is considered any payment made by a legal person for the benefit of the shareholder (associate) of that legal person, according to its share of participation, except for dividends in the form of shares, provided for in art.56 paragraph (2) of the Code and of the payments made in case of complete liquidation of the company, according to art 57 paragraphs (2) of the Code. The recognition of the payment as a dividend takes place regardless of whether or not the legal person came in the current fiscal year or in previous years.

In order to avoid double taxation of one and the same income, dividends are taxed only once: to the economic agent - dividend payer. Therefore, to the person to whom these dividends are paid, when calculating taxable income, the amounts given are excluded from the composition of the gross income. Exception being only dividends, received from non-resident economic agents.

12. other types of income that are not listed at the mentioned points and which are not specified as non-taxable. For example, these types of income refer to the winnings earned by the taxpayer (excluding winnings from lotteries and prizes obtained at international sports competitions).

Earnings are considered any type of income, obtained by the taxpayer at competitions, competitions, festivals [6]. From the above, there are several forms of income used in normative acts.

In the economic literature, profit is highlighted as a form of income. At Moldovanu author we meet the following definition of profit: Profit is the difference that appears if the total receipts (the total income of the company) are greater than the total cost. The profit is thus, a profit (income, profit) obtained by the people who organize and carry out an economic activity, that is to say, the production and marketing of goods and services. The concept of profit has always been the focus of economic theory. Thus, the opinion that profit is a reward, a reward for entrepreneurial activity, for the special qualities of the entrepreneur to innovate, to successfully manage a business, but especially to face the risk [7, 185]. Other authors are of the opinion that the expression "income tax" is not correct, because the amount of expenses in excess of income is actually taxed. Considering the fact that taxation operates with other concepts, than accounting (taxable income, non-taxable income, deductible expenses, non-deductible expenses), it would probably be more correct to call this indicator "profit tax" and why not? "Tax on expenses". In order to characterize the notion of profit, the domestic legislation also operates with such categories as: accounting profit and taxable profit. The definition of the categories of accounting profit and taxable profit starts from the fact that not in all cases the accounting principles, subordinated to the exact reflection of the economic phenomena and processes that take place in the entity, are convergent with the principles of taxation, which makes, between the accounting result and the fiscal one, to appear quantitative differences: the accounting result represents the global sum of the profit / loss of the management period, while the fiscal result represents the taxable profit / tax loss established according to the tax rules and according to which the volume of taxes is calculated. The analysis of this type of profit is more in the field of taxation than of accounting. [8, 118]

Conclusions

In conclusion, we want to specify, both in the legal and economic literature, as well as in the domestic legislation, a unique vision regarding the income, the profit, the benefit has not yet been formulated, and when we approach the end of each year, we all try to recap the ones achieved in the current year. If it is desired to evaluate the assets and financial situation of an entity, then the financial performance is measured with the help of profit. Its role is to help investors, creditors and other users of economic and financial information in evaluating its total performance. However, the quantification of a performance should not be limited to a single indicator, to a single result, but to the whole set of actions taken to achieve the proposed objectives.

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