Tax and Accounting Aspects of the Assignment of Debts

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ABSTRACT

The assignment of debts is the Convention by which the transferor-lender submits a claim against the assignee to a third party. According to the MPF. 18 98/2013 for amending and completing the accounting Regulations compliant with European directives approved by the MPF. 3055/2009, published in the Official Gazette, part I, no. 727 of 26 November 2013, the claims taken over by the disposal, will be shown in the accounts at cost of acquisition, their nominal value being recorded in off-balance sheet. In this paper we propose to emphasize the effects of accounting and tax treatment of debts taken from the transfer in the light of the new changes introduced by the MPP. 1898/2013.

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1. Introduction

The assignment of claim is a contract which has to meet the general conditions of validity of the contract. Since it allows other legal transactions (sale and purchase, commissioning payment, donation) it must meet specific substantive conditions of these contracts.

The assignment of the claim is one of the solutions that come to the aid of taxpayers (1) who experience funding problems, in the absence of immediate support backed by the banking market. This financing mechanism is easy to implement in order to meet the needs of cash-flow companies, assuming minimal effort, from a legal perspective.

In principle, any claim may be the subject of an assignment, no matter what the subject is, with the exception of some personal claims (e.g. salary).

Before assignment to third parties, certain formalities must be complied with: the notification of an assignment by the debtor or the acceptance of an assignment by the debtor.

2. Legislative aspects

In the light of the provisions of the articles of the law 1566 to 1592 287 in 2009 on the new Civil Code reprinted the Official Gazette, part I, no. 505 of 15 July 2011 Note:

Transfer of Rights - The Assignment of receivables transfer to the assignee: all the rights of the transferor in respect of the transferred claim, the guarantee rights and all the other accessories of the transferred claim. However, the assignor may not give to the cessionary, the possession of the property taken in pledge, without the consent of the assignee. If the assignee opposes, the pledged asset remains in the custody of the transferor.
The transfer of rights

Non-alienable character clause - The assignment of which is prohibited or restricted by the assignor to the debtor shall not take effect in respect of the debtor unless: the debtor consented to the assignment; the ban is not expressly mentioned in the entry that confirms the claim and the assignee knew and did not need to know the existence of the ban at the time of the assignment; the assignments of debts concerns a claim which has as its object a sum of money.

Non-alienable character clause

Form of assignment - The claim is transferred by the transferor and the Convention's accounts without notifying the debtor. The debtor's consent is not required where, as appropriate, the claim is essentially linked to the person of the creditor.

Official rendition that confirms the claim - The assignor is obliged to remit the claim that confirms the title of the transferee in its possession, and any other substantiating documents of law passed.

Effects of assignment prior to notification - Assignment of claim produce effects between the transferor and the transferee, and the latter can claim everything that the transferor receives from the borrower, even if the assignment was not relied on debtor. The transferee may, in the same circumstances, to make acts of self-preservation on the right transferred.

Overdue interest and unearned - If not agreed otherwise, interest and any other income relating to the claim, become due, but still not received by the transferor, due to the transferee, with effect from the date of assignment.

Additional costs - The debtor is entitled to be compensated by the transferor and the transferee for any additional expenses caused by the assignment.

Effects of assignment as between the assignee and the debtor of the assigned - The debtor may oppose the transferee all means of defense which it could claim against the assignor. Thus, he may oppose the payment made to the transferor before transfer to be relied, whether or not it has knowledge of the existence of other disposals, and any other cause of extinction of obligations arising before that time. The debtor may also oppose to payment to the assignee himself or his fideiusorul did it in good faith creditor apparently, even though the required formalities were completed to make the assignment of the debtor and third parties relied. In which case there is an opposing assignment thru acceptance, the assigned debtor can no longer oppose the transferee the compensation that he could invoke in dealings with the assignor. (application art. 158 din Law nr. 71/2011).
Effects of assignment as between the assignee and the debtor of the assigned

Successive assignments - When the assignor has conveyed the same claim to several successive assignees, the debtor frees himself by paying under the assignment which was first communicated or agreed, through a signed up with definite date. Between successive assignees of the same receivables It is preferred the one who first joined the assignment to the archive, regardless of the date of the assignment or the communication thereof to the borrower.

The obligation of guarantee - If the assignment is for a consideration, the transferor has, of law, the obligation of warranty against assignee. Thus, the assignor guarantees the existence of the claim in relation to the date of the assignment, without answering and creditworthiness of the debtor snapped. If the assignor expressly obliged himself to guarantee the solvency of the debtor for transferees, shall be presumed, in the absence of a stipulation to the contrary, it only took into account the solvency of the assignment. Liability for the debtor's solvency snapped extends to price competition assignment, plus expenditure incurred by the assignee in connection with the assignment. Also, if the transferor was, at the time of the assignment, the debtor's insolvency status assigned, shall apply, as appropriate, laws concerning the liability of the seller in bad faith for hidden defects of the object sold. In the absence of the communiqué otherwise the assignor free of charge does not guarantee the existence of the claim even after assignment.

The nullity of the contract of assignment of claim - the finding of nullity action of this type of contract is lucrative, assessable in money. Regarded as a sanction of civil law, absolute nullity, lacks the legal effects of the act contrary to legal norms issued in order to make it valid, can be found out only by court. Therefore, in a situation in which the parties are in conflict of interest with respect to the invalidity of a contract, so when the dispute between the parties regarding their rights in relation to which the parties may not trade, conciliation procedure is devoid of any effective and contrary to the purpose for which it was established, its performance began appearing to be overly rigid and purely formal. Understood as a Convention by which a creditor has a claim to another person, the assignment is a consensual contract, ending time of the valid agreement of will. In terms of the object of leasing is a debt wrangle, liquid and due, and not a credit agreement, it is not necessary for the assignee to have authorization of the National Bank.

3. Accounting and tax aspects

In accounting terms, assignment of the receivable is stated at art. 190 of the accounting regulations approved by OMFP 3055/2009 with amendments to The MPF. 1898/2013.

Accounting issues relating to the assignment of receivables

Source: Own adaptation after OMFP 3055/2009.
4. The Accounting Treatment of transfers of receivables compared in the light of the new provisions of Resolution 77/2014

We will analyze the case of a society that bought the debts of two nonresident societies representing credit and interest to a resident society. The purchase was made at the economic value of debt, under the nominal value.

Beside the tax implications, we must establish also the monograph accounting for registering this economic operation.

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The situation in lei transferred claims table (at acquisition cost)

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<thead>
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<th>Claims taken over in the course of the financial year</th>
<th>Claims received during the financial year, of which:</th>
<th>Claims assigned on expenses in the course of the financial year</th>
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<tbody>
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<td>Balance at the beginning of the financial year</td>
<td>Claims taken over in the course of the financial year</td>
<td>Claims excluded from extra accounting records during the financial year, of which:</td>
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</tr>
<tr>
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Up to 31 December 2013, in this case the assignees of debts, the difference between the value of the debt being sold and taken from the sum payable to the transferor was recognized by the transferee to the income from the date of an infringement of rights and obligations, according to terms of contract.

As of 1 January 2014, the receivables transferred by a transfer stands out in the account register flow nominal value of receivables taken over through disposal, and in the nominal value of the loan, these receivables accounting discontinued as payment, are handed over to third parties or due to the inability of their payment. Account balance represents the nominal value of receivables taken from the disposal, at any given time.

In the case of the acquisition of a portfolio of debt, the cost of the acquisition is allocated to each claim so taken. In case the assignee recovers from the debtor an amount greater than the cost of acquisition of the debt against it, the difference between the declared value and acquisition cost is recorded to income.

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There are 2 variants of the receivables transferred through transfer and highlighted at nominal value.
5. Case study

We will review the case of a company which bought the claims of two non-resident companies accounting for loan and interest to a company which is a resident. The purchase was made at the economic value of the claim, below the nominal value.

Besides the tax implications, it will be established the monograph accounting for registering this economic operation.
In the case of transferees of a receivable, the difference between the value of the debt taken over through the assignment, and the sum payable is income for the transferee to the transferor, and, respectively, at the expense of the transferor. When income and expenditure recognition is an infringement on the rights and obligations under the provisions of the contract.

In terms of tax, in case of assignment of receivables contracts meet legal conditions, income and expenses arising as a result of transactions, receivables and assignment are taken into account in determining taxable profit. Thus, the income received by the transferee is taxable on the calculation of tax on profit and expenditure representing debt value alienated law represents for expenses incurred by the transferor for the purposes of taxable income.

**6. Conclusion**

In the context of the financial crisis which has affected the economic environment, the number of bankruptcies has increased, so that increasingly more and more companies turn to disposals of loans. The subject is increasingly more often the subject of papers on the role of the courts such that companies see themselves forced to approach tax and accounting practices with regard to it.

With the publication of HG. 77/2014 for changing the rules for the application of the tax code, on 12 February 2014, the stability that the income received from the assignment of receivables is recognized at the date of payment the debt taken over through a transfer only if the declared value is higher than the price of the assignment. It may be said in conclusion that for entities that deal with this type of modification operations accounting treatment is beneficial and can be a support for future economic development.

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