

SPANISH SOCIETIES' TAX LAW AND THE FISCAL ADJUSTMENTS TO THE ACCOUNTING EXPENSE

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ABSTRACT

This paper aims to understand why accounting expenses are not directly accepted as fiscal cost and how operates the fiscal adjustments, in the determination of the taxable base in the Corporate Income Tax (CIT) law. For this purpose, it analyses the legal acts and doctrine, in particular, it researches data sources of Spain: the Ley del Impuesto sobre Sociedades (LIS), it means, the Spanish Corporate Income Tax Law and, in particular, the Spanish doctrinal understandings. The results show that the tax law assumes the net profit measured under the General Accounting Principles, as a starting point for the tax base determination. This fact avoids the duplicate record of economic transaction in the companies, in both domains, fiscal and accounting. Nevertheless, the two dimensions have different objects, so net income may not be integrally considered for tax purposes; legislator makes the taxpayer make the fiscal adjustment to take the taxable income. It is supposed to have extraordinary tax corrections, but Spanish legislator presents a tax code with many exceptions, imposing an increasingly complex Spanish tax system.

Keywords: *Corporate Income Tax Law, Deductibility, Spain, Tax expenses*

1. INTRODUCTION

The expense is the tax base's negative component; in corporate income taxation, it defined as the cost to obtain the business' incomes (García-Quintana, 1949). The tax regulator has not changed the expenses' definition over time, except the corrections that the corporate income tax law imposes, and it can change in each temporal moment. It is difficult to demonstrate the tax expense concept if it does not establish a relationship with the accounting cost's definition, due to the particular importance of the accounting standards in the determination of the taxable basis of the business income tax law (Albá, 2004). The Spanish Commerce Code's Article 36 presents the concept of the tax cost as the decrements in the net equity during the period. It can be under the form of exits or decreases in the assets' value or recognition or increase in liabilities; since they not distributed to partners or owners. The income's concept opposes to the expense's one, is not expense all that is paid out. The cost decreases the equity's economic dimension, so there is an expense when it contributes negatively to the equity's formation. Taking into consideration two premises: first, the accounting profit is the starting point to the taxable base's determination in the direct estimation regime. Second, the accounting net income obtained under the accounting standards is subject to the CIT corrections; so, in principle, the accounting expenses are tax costs in the taxable income's calculation, except in particular situations designed in the CIT law. Spain's CIT Law does not define the concept of accounting expense nor tax expense. Nevertheless, the law presents some essential requirements to predict the expense's deductibility (Albá, 2004). They are taxable costs: goods or materials' purchase, external services, personnel expenses, management expenses, financial costs, depreciation and amortisation, impairment losses, amongst others. The law 61/1978 foreseen the concept of "necessary expense," in the sense of, required for incomes' obtaining. The approval of the corporation tax law (LIS) places this concept aside, to be tax cost is required the correlation with the incomes, and since it is not a liberality. With LIS, the concept of necessary cost became broader, not only the required cost but also correlated with the company's income (Ministerio Economía Hacienda, 2009).

2. THE CIT'S CORRECTIONS

The taxable basis is the accounting profit since correctly determined, corrected according to the LIS requirements, and taking into consideration the tax and the accounting law. Both domains have different functions. The first, to determine the strict enforcement of tax obligations and to observe the receipt of tax revenues; it has as underlying the tax justice's principles, such as the principle of the generality, ability to pay, equality, progressivity, and non-confiscation (Nabais, 2018, Queralt et al., 2019). The second, the accounting law, has the primary objective to reflect the company's financial position, it means to determine the net profit; is based on economic principles such as the going concern, the uniformity, the relative importance, the incomes and expenses' correlation, the accruals basis, amongst others (Flood, 2019, Melville, 2015). The difference between both domains, objectives and inspiring principles evidence the difficulties practices to equalisation between the accounting result with the tax base (Sarmiento et al., 2019). Two steps divide the move between the accounting profit and taxable base, first the accuracy in determining the accounting result under accounting law; and second, to make the necessary accounting results' corrections, according to the corporate income tax law (García, 2001). The tax base's determination uses the net profit stated according to the accounting rules and principles, but data are not accepted unconditionally by the LIS. So it imposes a set of adjustments to adapt the accounting data to the tax law's principles and goals. Tax legislator's remissions of the result for determination of the tax base in the CIT are numerous.

Table 1: Tax legislator's remissions of the result for the determination of the tax base in the CIT

Article	Matter
Article 10.3	Tax base's calculation general rules
Article 11.3	Revaluations
Article 17.1	Incomes and expenses' imputation
Article 120.1	Taxpayers' accounting obligations
Article 121.1 e 4	Income's presumption due to the outcrop of goods or rights not declared
Article 122.1	Voluntary accounting revaluations
Article 131	Administration faculties to determine the tax base
"Disposición transitoria primera"	Temporal application of regularization of LIS' extra-accounting adjustments

Source: Author

Castro (2000) interprets, minutely, the article 10.3 of the LIS and conclude that there is a need for observation two conditions from the accounting profit to reach the tax base. First, to respect all the requirements established by the accounting rules, and second, to make the tax corrections imposed by the CIT Law, when they distance themselves from accounting. According to Rodríguez (1999), In the moment of taxable base's determination, it is essential on the one hand, have very clear the magnitude of the accounting result, elementary condition for its calculation; on the other hand, to know the implications that derive from every correction to the accounting result. According to article 10.3 of the LIS, although the accounting standards remission act as a general rule to taxable base determination, the correction norms must be considered of exceptional character (Moreno, 2005). The extraordinary practice of the results' adjustments allows the rectification imposed by the tax law, positive and negative extra-accounting adjustments concretizes this correction. Thus, it is the corporate income tax statement that supports adjustments, and not the accounting. Thus, they are the mechanisms to convert the accounting result in a taxable profit, without change the accounting records. The article 131 of the 27/2014 Law establish that for the taxable base's determining, the tax administration shall apply the rules referred to in article 10.3 of the LIS. About the LIS's article n.º 131, Chico de la Cámara (2006) recognizes that this legal disposition give Tax Authority the faculty to qualify

and to interpret the accounting standards because it does not exercise a declarative function of the private rights of a mercantile nature, but merely the economic fact's tax classification for taxable base's determination. There is no doubt, the Tax Authority can act over the taxable income through the pertinent adjusts, but not over the accounting net profit (Ordanza and Ruiz, 2003). The last, is subject to corrections to achieve the result according to the tax law rules, provided that it expressly determines qualification, valuation or imputation's criteria different from those considered in the accounting; thus, when the LIS does not contemplate specific rules for the basis' determining, it should be understood the tax law accepts accounting criteria (Ordanza and Ruiz, 2003). Accounting standards are governed by the generally accepted principles (GAP) in the commerce's code and Spanish accounting law, which may lead to the understanding that the accounting result does not represent the taxpayer's real ability to pay taxes (Chico de la Cámara, 2006). The tax result' calculation from accounting result assumes two premises; first, there is no specific regulation of taxable income and deductible expenses since these will be recognized by the accounting rules, with the corrections the law determines for each case. Second, it will not be possible to find tax valuation rules, so we will also have to resort to the accounting law's valuation rules, and from there, introduce the CIT law's corrections (Ordanza and Ruiz, 2003).

3. THE CIT'S STATEMENT

All the following images represent some parts of the Spanish Corporate Income Tax's statement, model 200. This tax declaration determines the tax to pay by the taxpayer (resident companies and non-resident's stable establishments).

Image 1: The Spanish Corporate Income Tax's statement (Model 200)

Resultado de la cuenta de pérdidas y ganancias			
Resultado de la cuenta de pérdidas y ganancias			00500
	Aumentos		Disminuciones
Correcciones por Impuesto sobre Sociedades.....	00301		00302
Resultado de la cuenta de pérdidas y ganancias antes de Impuesto sobre Sociedades.....			00501
	Aumentos		Disminuciones
Correcciones al resultado contable al considerar los requisitos o calificaciones contables referidos al grupo fiscal (art. 62.1a) LIS) (i.e., operaciones con acciones propias a nivel de grupo fiscal, coberturas, etc.)....	01230		01231

Source: Spanish Tax Authority

This picture is representative of the framework presented at point two of this paper. The first line asks for the gains and losses' result, it means the accounting net profit, and then it evidences the corporate income tax's corrections. It demonstrates that, effectively, the starting point for companies' income tax calculation is the accounting net income. The following pictures represent, as the first one, the LIS's statement. The presentation of it has the main goal to evidence two situations: first, the accounting does not support the tax adjustments, the CIT statement serves to do it; then, to give an idea tax emendations' quantity that the Spanish Law imposes to taxpayers. The adjustments can impose a movement of increase or decrease to the net profit. It means that when the accounting recognizes a cost as a net income's negative element and the taxation does not accept it as a deductible expense, the taxpayer must do an increase correction, in order to eliminate the negative influence in the result.

Image following on the next page

Image 2: The Spanish Corporate Income Tax's statement (Model 200)

Detalle de las correcciones al resultado de la cuenta de pérdidas y ganancias (excluida la corrección por IS)		
	Aumentos	Disminuciones
Cambio de criterios contables (art. 11.3.2 ^a LIS).....	00355	00356
Operaciones a plazos (art. 11.4 LIS).....	00357	00358
Reversión del deterioro del valor de los elementos patrimoniales (art. 11.6 LIS).....	00359	00360
Rentas negativas (art. 11.9 y 11.10 LIS).....	00225	00226
Ajustes por rentas derivadas de operaciones con quita o espera (art. 11.13 LIS).....	01514	00272
Otras diferencias de imputación temporal de ingresos y gastos (art. 11 LIS).....	00361	00362
Diferencias entre amortización contable y fiscal (art. 12.1 LIS).....	00303	00304
Deducción del 30% importe gastos de amortiz. contable (excluidas emp. reducida dimensión) (art. 7 Ley 16/2012).....		00505
Amortización del inmovilizado intangible (art. 12.2 LIS) y amortización de la DT 13 ^a .1 LIS.....	01005	01006
Amortización de inmovilizado afecto a actividades de investigación y desarrollo (art. 12.3 b) LIS).....	00305	00306
Libertad de amortización de gastos de investigación y desarrollo (art. 12.3 c) LIS).....	00307	00308
Libertad de amortización inmovilizado material nuevo (art. 12.3 e) LIS).....	01003	01004
Otros supuestos de libertad de amortización (art. 12.3 a) y d) LIS).....	00309	00310
Libertad de amortización con mantenimiento de empleo (RDL 6/2010 y DT 13 ^a .2 LIS).....	00514	00509
Libertad de amortización sin mantenimiento de empleo (RDL 13/2010 y DT 13 ^a .2 LIS).....	00516	00551
Pérdidas por deterioro del art. 13.1 LIS no afectada por el art. 11.12 ni por DT 33 ^a .1 LIS.....	00321	00322
Pérdidas por deterioro del art. 13.1 LIS y provisiones y gastos (art. 14.1 y 14.2 LIS) a los que se refiere el art. 11.12 y DT 33 ^a .1 LIS.....	00415	00211
Pérdidas por deterioro de IM, inversiones inmobiliarias e II, incluido el fondo de comercio (art. 13.2 a) y DT 15 LIS).....	00331	00332
Ajustes por pérdidas por deterioro de valores repr. de partic. en el capital o fondos propios (art. 13.2 b) LIS).....	00325	00326
Ajustes por pérdidas por deterioro de valores repr. de partic. en el capital o fondos propios (DT 16 ^a .1 y 2 LIS).....	01518	00394
Ajustes por pérdidas por deterioro de valores repr. de partic. en el capital o fondos propios (DT 16 ^a .3 LIS).....	00333	00334
Pérdidas por deterioro de valores representativos de deuda (art. 13.2 c) LIS y DT 15 ^a LIS).....	00327	00328
Aplicación del límite del art. 11.12 LIS a las pérdidas por deterioro del art. 13.1 LIS y provisiones y gastos (art. 14.1 y 14.2 LIS).....	00416	00543
Gastos y provisiones por pensiones no afectados por el art. 11.12 LIS (art. 14.1, 14.6 y 14.8 LIS).....	00335	00336
Otras provisiones no deducibles fiscalmente (art. 14 LIS) no afectadas por el art. 11.12 LIS.....	00337	00338
Subvenciones públicas incluidas en el resultado del ejercicio, no integrables en la base imponible (art. 14.8 LIS).....		00368
Gastos no deducibles por considerarse retribución de fondos propios (art. 15 a) LIS).....	01002	
Multas, sanciones y otros (art. 15 c) LIS).....	01815	
Pérdidas del juego (art. 15 d) LIS).....	00343	
Gastos por donativos y liberalidades (art. 15 e) LIS).....	00339	
Gastos de actuaciones contrarias al ordenamiento jurídico (art. 15 f) LIS).....	01816	
Operaciones realizadas con paraísos fiscales (art. 15 g) LIS).....	00341	00342
Gastos financieros derivados de deudas con entidades del grupo (art. 15 h) LIS).....	00508	
Gastos derivados de la extinción de la relación laboral o mercantil (art. 15 i) LIS).....	01817	
Gastos correspondientes a operaciones realizadas con personas o entidades vinculadas (art. 15 j) LIS).....	01009	01010
Pérdidas por deterioro de valores repr. de partic. en el capital o fondos propios (art. 15 k) LIS).....	01807	01811
Disminución de valor originada por criterio de valor razonable (art. 15 l) LIS).....	01808	01812
Deuda tributaria de actos jurídicos documentados (ITP y AJD) (art. 15 m) LIS).....	01813	01814
Ajustes por la limitación en la deducibilidad de gastos financieros (art. 16 LIS).....	00363	00364
Revalorizaciones contables (art. 17.1 LIS).....	00345	00346
Operaciones de aumento de capital o fondos propios por compensación de créditos (art. 17.2 LIS).....	01818	01819
SICAV: Reducciones de capital y distribución de la prima de emisión (art. 17.6 LIS).....	00371	
Transmisiones lucrativas y societarias: aplicación del valor de mercado (art. 17.4 LIS).....	00347	00348
Operaciones vinculadas: aplicación del valor de mercado (art. 18 LIS).....	01011	01012
Cambios de residencia y otras operaciones del art. 19 LIS.....	01013	01014
Efectos de la valoración contable diferente a la fiscal (art. 20 LIS).....	01015	01016
Exención sobre dividendos o participaciones en beneficios de entidades residentes (art. 21.1 LIS).....		00370
Exención sobre dividendos o participaciones en beneficios de entidades no residentes (art. 21.1 LIS).....		02181
Exención sobre la renta obtenida en la transmisión de valores entidades residentes (art. 21.3 LIS).....	02182	02183
Exención sobre la renta obtenida en la transmisión de valores entidades no residentes (art. 21.3 LIS).....	02184	02185

Source: Spanish Tax Authority

There are numerous the amount of possible accounting profit's corrections. As it is possible to see in image 2 and 3, the CIT predicts many corrections. The taxpayer need to stay attentive to issues such as the depreciation, donations, fines and penalties, operations carried out with tax havens, temporal imputation's differences, financial expenses, game losses, expenses with extinction of the employment relationship, forward transactions, tax benefits, the special conditions to smaller companies, amongst others.

Image 3: The Spanish Corporate Income Tax's statement (Model 200)

Detalle de las correcciones al resultado de la cuenta de pérdidas y ganancias (excluida la corrección por IS) (cont.)		
	Aumentos (cont.)	Disminuciones (cont.)
Exención sobre la renta obtenida en los supuestos del art. 21.3 LIS distintos a transmisiones de valores entidades residentes.....	02186	02187
Exención sobre la renta obtenida en los supuestos del art. 21.3 LIS distintos a transmisiones de valores entidades no residentes	02188	02189
Exención de rentas en el extranjero (art. 22 LIS).....	00256	00278
Reducción de rentas procedentes de determinados activos intangibles (art. 23 y DT 20 ^a LIS)	01822	00372
Obra benéfico-social de las cajas de ahorro y fundaciones bancarias (art. 24 LIS)	00373	00374
Impuesto extranjero soportado por el contribuyente, no deducible por afectar a rentas con deducción por doble imposición (art. 31.2 LIS)	00340	01589
Impuesto extranjero sobre los beneficios con cargo a los cuales se pagan los dividendos objeto de deducción por doble imposición internacional (art. 32.1 LIS).....	00351	
Agrupación de interés económico (Cap. II del Tit. VII LIS)	00375	00376
Unión temporal de empresas, ajustes del art. 45.1 LIS	01320	01321
Unión temporal de empresas, ajustes por rentas exentas de UTE que opera en el extranjero (art. 45.2 LIS).....	00184	00544
Unión temporal de empresas, ajustes por rentas exentas por participar en el extranjero en fórmulas de colaboración análogas a las UTE (art. 45.2 LIS)	01022	01023
Unión temporal de empresas, ajustes por criterios de imputación temporal (art. 46.2 LIS).....	01018	01019
Bases imp. negativas generadas dentro del grupo fiscal por la ent. transmitida y que hayan sido compensadas (art. 62.2 LIS).....	01275	01276
Sociedades y fondos de capital-riesgo y sociedades de desarrollo industrial regional (capítulo IV del título VII LIS)	00377	00378
Valoración de bienes y derechos. Régimen especial operaciones reestructuración (capítulo VII del título VII LIS).....	00379	00380
Minería e hidrocarburos: factor agotamiento (arts. 91 y 95 LIS).....	00381	00382
Hidrocarburos: Amortización de inversiones intangibles y gastos de investigación (art. 99 LIS)	00383	00384
Transparencia fiscal internacional (art. 100 LIS).....	00387	00388
Empresas de reducida dimensión: libertad de amortización (art. 102 LIS).....	00311	00312
Empresas de reducida dimensión: amortización acelerada (art. 103 LIS y DT 28 ^a LIS).....	00313	00314
Empresas de reducida dimensión: pérdidas por deterioro créditos insolvencias (art. 104 LIS)	00323	00324
Arrendamiento financiero: régimen especial (art. 106 LIS)	00317	00318
Régimen fiscal entidades de tenencia de valores extranjeros (capítulo XIII del título VII LIS).....	00385	00386
Régimen de entidades parcialmente exentas (capítulo XIV del título VII LIS).....	00389	00390
Montes vecinales en mano común (capítulo XV del título VII LIS)		00396
Régimen de entidades navieras en función del tonelaje (capítulo XVI del título VII LIS).....	00397	00398
Aportaciones y colaboración a favor de entidades sin fines lucrativos.....	00250	00251
Régimen fiscal entidades sin fines lucrativos (Ley 49/2002).....	00391	00392
Cooperativas: Fondo de reserva obligatorio (Ley 20/1990).....		00400
Reserva para inversiones en Canarias (Ley 19/1994)	00403	00404
Exención transmisión bienes inmuebles (DA 6 ^a LIS)	00518	00519
Rentas procedentes de transmisión de inmovilizado obtenidas por las Autoridades Portuarias (DA 68 ^a Ley 6/2018).....		01824
Operaciones a plazos (DT 1 ^a LIS).....	00510	00512
Adquisición de participaciones en entidades no residentes (DT 14 ^a LIS) (*)	00329	00330
Reinversión de beneficios extraordinarios (DT 24 ^a LIS)	00365	01026
Ajustes por la primera aplicación de la Circular 4/2017 del Banco de España, a entidades de crédito (DT 39 LIS).....	02129	02130
Entidades en rég. de atribución de rentas const. en el extranj. con presencia en territ. español (art. 38 TRLIRNR).....	00409	00410
Correcciones específicas de entidades sometidas a la normativa foral	00411	00412
Eliminaciones pendientes de incorporar de sociedades que dejen de pertenecer a un grupo.....	01027	01028
Otras correcciones al resultado de la cuenta de pérdidas y ganancias.....	00413	00414
Total correcciones al resultado de la cuenta de pérdidas y ganancias (excluida la corrección por IS) (véase en página 19)	00417	00418

(**) Para participaciones adquiridas hasta el 21/12/07.

Source: Spanish Tax Authority

4. CONCLUSION

The treatment difference between accounting expense e fiscal cost comes of the goals and principles' difference in the accounting and tax law. The tax domain has the main goal to the revenues' collection under the tax justice principles, the accounting dimension searches to the production of reliable financial position to help users make the right economic decisions. This idea justifies the fact that tax law does not accept some accounting expenses as fiscal spending, and subjects the taxpayer to tax corrections under the corporate income tax law dispositions. The doctrine considers those adjustments must have exceptional character, but a closer look over the tax law and the model 200, it is possible to understand that those corrections are not non-usual practice. The amount of situations that can be subject to adjustments are a lot and may import a considerable complexity in tax Spanish tax system.

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