

DOI: <https://doi.org/10.53486/cike2022.32>

CZU: 657.411(478)

RETURN OF THE ASSOCIATE’S CONTRIBUTION TO THE ENTITY: ACCOUNTING AND TAX ISSUES

Assoc. Prof. PhD, Rodica CUȘMĂUNSA

Academy of Economic Studies of Moldova

cusmaunsa.rodica.georghe@ase.md

<https://orcid.org/0000-0003-0444-9799>

Assoc. Prof. PhD, Natalia CURAGĂU

Academy of Economic Studies of Moldova

curagau.natalia.zaharia@ase.md

<https://orcid.org/0000-0002-1953-0330>

Assoc. Prof. PhD, Iuliana ȚUGULSCHI

Academy of Economic Studies of Moldova

tugulschi.i@ase.md

<https://orcid.org/0000-0001-8544-7327>

***Abstract.** The evolution of events in everyday life can often lead us to receive some decisions contrary to our initial intentions. Thus, in entrepreneurial activity there are situations in which the owners (partners) of an entity may request from the entities in which they have invested the return of material assets which they had previously transferred to these entities as a contribution in kind to the share capital. This article examines some problematic issues relating to the return of contribution in kind. Using research methods, such as analysis and inference, the opinions of local scholars have also been studied, which has allowed the formulation of more solid conclusions and recommendations on the solution of the problem under investigation.*

***Key words (terms):** share capital, withdrawn capital, contribution in kind to share capital, redemption of share, associate.*

JEL Classification: M41

Introduction

One of the essential conditions for the establishment and functioning of the entity as a legal person is to endow it with certain patrimonial values, which allows the legal entity to manifest itself in the civil circuit. The foundation of the patrimony, in the narrow sense, is constituted by the rights with which the founders of the entity endow it, the group of which forms the social capital upon incorporation.

The following table presents the definition of the registered capital in different normative acts.

Table 1. Comparison of the definition of social capital in different normative acts

Normative act	Definition
CC art. 251 paragraph (2)	The registered capital of the trading company is formed from the contributions of the founders expressed in lei.
Law on joint-stock companies no. 1134 of 02.04.1997, art. 38, paragraph (3)	The registered capital is constituted by the value of the contributions received on account from the payment of shares and will be equal to the nominal (fixed) value of the shares exposed, if this has been established.
Law on Limited liability companies no. 135 of 14.06.2007 art. 21, paragraph (1)	The registered capital of the company is constituted by the contributions of the associates and represents the minimum value of the assets expressed in lei, that the company must own.
NAS "Equity capital and liabilities"	The registered capital represents the total value of the social shares of the entity's owners`.

Source: developed by the authors based on [1, 4, 5]

From the legal provisions analyzed above, it follows that the associate's contribution to the registered capital of the company (Llc), as a rule, is made in cash or in non-monetary form (goods), if the partnership agreement provides for this fact.

The purpose of this article consists in the research and examination of the accounting and fiscal aspects related to the reduction of the company's share capital with the aim of returning to the associates some parts of the contributions made by them in the share capital , and the objective lies in the investigation and elucidation of the problems listed above .

Therefore, the provisions of the national accounting regulations were studied, as well as the works, researches and opinions of local economists and scholars in order to formulate the conclusions and recommendations on the issues addressed.

Applied methods

The research method emerges from the analysis of the theoretical and practical materials regarding problematic issues related to the return of the contribution of the associate to the entity . The basis of the theoretical foundation was the analysis, synthesis, deduction and inductive method used for a clear and representative interpretation. The importance of the research of this article consists in achieving the nominated goal and objective, by examining the provisions of the national accounting regulations, as well as the works, researches and opinions of local authors, scholars and researchers, in order to solve the problem in question.

Results obtained and discussion

According to point 15 of the National Accounting Standard "Equity and liabilities", the reduction of the share capital is accounted for as a reduction of it simultaneously with:

- 1) the reduction of the unpaid capital, if the owners have not fully submitted the subscribed contributions within the terms established by the legislation in force;
- 2) the reduction of the entity's losses from the previous years when covering them;

- 3) the reduction of the capital withdrawn upon the cancellation of the acquired, redeemed or previously acquired company shares;
- 4) the increase of the debts towards the owners upon their restitution of some fractions of the company shares.

In accordance with paragraph (4) art. 22 of [the Law on limited liability companies no. 135 of 14.06.2007](#), "*During the period of activity of the company, the associates cannot ask for the restitution of their contribution paid in the social capital*". However, this rule is not mandatory. If there is a decision made by the company's associates to reduce the share capital with the aim of returning to the associates a part of their contributions to the share capital made by them, subject to compliance with other provisions of the law that restrict the decrease of the share capital (depending on the level of the net assets), the law allows the restitution of associates' capital contributions.

Thus, there are situations in which the associates of the company decide to reduce the share capital in order to reimburse the associates' part of their contributions to the share capital. This opportunity is provided for in paragraph (3) art. 34 of Law no. 135 of 14.06.2007: "*If the reduction of the share capital is not motivated by losses, **the restitution of some fractions of the contributions to the associates is carried out by the company only after the state registration of the changes made in the documents of association, changes determined by the reduction of the registered capital, ...***".

Thus, we further propose to analyze the accounting and fiscal aspects related to this situation depending on the form of the contributions to the social capital, the date and the conditions of the restitution of the contributions.

In accordance with paragraph (1) art. 23 of [the Law](#) on limited liability companies no. 135 of 14.06.2007 "*The object of the contribution in kind can be any asset in the civil circuit. The good that is the object of the contribution in kind will be indicated in the deed of association*".

At the same time, according to paragraph (4) art. 23 of Law no. 135/2017 "*The goods that are the object of the contribution in kind become the property of the company, if the act of association does not provide otherwise*".

Thus, from the moment when the partner made an in-kind contribution to the capital of the company, he/she (the associate) cannot request the return (reimbursement) of their contribution, the asset transferred becoming the property of the company. The contribution in kind can become the property of the former owner (associate) again only on the basis of a new transaction between the associate and the entity in which he invested. For example, based on an agreement whereby the company buys back the partner's share in the share capital in exchange for the transfer of the contribution in kind (the building).

In this case, the following distinct operations are to be analyzed both from the accounting and fiscal points of view:

- 1) redemption of the share held by the partner in the company's capital;
- 2) sale to the partner of the asset that previously constituted a contribution in kind to the social capital;
- 3) exoneration of mutual obligations.

In this case, the accounting records regarding the return of contributions from the social capital will be as follows:

- the decision of the entity’s associates to buy back the share owned by the natural person X in the registered capital:

Dt 315 "Capital withdrawn"

Ct 536 "Debts to owners"

- the sale (transfer) of the building to the associate in exchange for the share held in the capital:

Dt 234 "Other current claims"

Ct 621 "Income from operations with fixed assets"

- VAT related to the delivery of the building transmitted to the associate:

Dt 234 "Other current claims"

Ct 534 "Debts to the budget"

- writing off the accumulated depreciation of the building on the date of transmission:

Dt 124 "Depreciation of fixed assets"

Ct 123 "Fixed assets"

- settlement of the accounting value of the building transmitted to the associate:

Dt 721 "Expenses with fixed assets"

Ct 123 "Fixed assets"

- compensation of the obligation towards the partner regarding the redemption of the part of the account receivable regarding the delivery of the building:

Dt 536 "Debts to owners"

Ct 234 "Other current claims"

- reduction of the share capital on account of the share in the share capital redeemed by the Company:

Dt 311 "Share capital"

Ct 315 "Withdrawn capital"

- losses obtained from the redemption operation of the share held by X in the share capital:

Dt 332 "Undistributed profit (uncovered loss) from previous years"

Ct 315 "Withdrawn capital"

- the income tax withheld at the source of payment from the associate's income obtained from the share redemption transaction in the share capital:

Dt 536 "Debts to owners"

Ct 534 "Debts to the budget"

- compensation of the tax withheld at the source of payment by the associate from other sources:

Dt 241 "Cash-desk”, 242 "Current accounts in national currency"

Ct 536 "Debts to owners"

For tax purposes, the company's income from the transaction of the transfer of the building in exchange for the share held in the capital is to be applied the provisions of art. 56 of the Fiscal Code according to which " *If the economic agent makes in-kind payments to its shareholders (associates) according to their share of participation (dividends, payments in case of liquidation or in another form), then this property is considered to have been sold to the shareholder (associate) by the economic agent at its market price. The value basis of the property obtained by individual shareholders is the respective market price .*

Accordingly, in the tax records the entity is to recognize the income from this transaction at its market price. Thus, the corresponding adjustment will be included in annex 1D of the VEN12 income tax declaration for the fiscal period A/2022.

We are going to answer the following question whether the entity has the obligation to withhold the income tax at the source of payment from the income obtained by the associate from the transaction of redemption of the share in the entity's share capital in exchange for the return of the contribution in kind to its share capital (art. 90 of the FC). Thus, it is important to see if the analyzed situation falls under the exceptions to the withholding tax at the source of payment contained in paragraph (4) art. 90 of the FC, where in point c) it is mentioned the "... *alienation of securities* ".

According to its economic content, the analyzed transaction falls perfectly within the scope of this rule. Thus, transactions with assets that represent rights in the social capital do not fall under the withholding of income tax at the source of payment (art. 90 of the CF).

However, in specialized periodicals some authors, referring to some definitions from a number specialized laws, are of the opinion that the transactions with shares in the capital of an entity (Llc) do not fall under this rule and, accordingly, the entity has the obligation to withholds tax at the source of payment from the capital increase registered by the natural person - the associate. [2]

Therefore, the competent state bodies are to shed light on the analyzed situation and present explanations related to the uncertainties described above.

In the situation where the entity, in order to reduce the fiscal risks, decides to withhold income tax at the source of payment from the associate's income obtained from the analyzed transaction, the amount of withheld tax will be determined by the following relationship: (the market value of the share that is equal to the market value of the building received in exchange for the share – the value basis of the share held by the founder in the capital of the entity) x 50% (the taxable share of the capital increase for natural persons) x 12% (the income tax share).

In the situation when the entity does not have a source of income of the associate from which it could withhold the income tax at the source of payment, it does do it. However, this fact does not release it from the obligation to calculate, declare and pay the tax amount in the budget. In this case, the associate would pay the entity from other sources the amount of income tax withheld at the source of payment. [2]

Conclusions

After examining the material, the following conclusions can be drawn. The associate's contribution in kind to the company capital of an entity (Llc) becomes its property, and the associate cannot request the return (reimbursement) of their contribution. The contribution in kind can become the property of the former owner (associate) again only on the basis of a new

transaction between the associate and the entity in which he invested. For example, based on an agreement whereby the company buys back its partner's share in its share capital in exchange for the transmission of the contribution in kind (the building).

BIBLIOGRAPHY

1. Codul civil al Republicii Moldova nr. 1107 din 06.06.2002. Disponibil:
2. https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro# [Accesat 22 Septembrie 2022] [Accesat 22 Septembrie 2022]
3. CIOBANU, V., 2022. Asociatul entității solicită returnarea aportului în natură: aspecte contabile și fiscal, contabilsef.md, [online] Disponibil: <https://www.contabilsef.md/asociatul-entitatii-solicita-returnarea-aportului-in-natura-aspecte-contabile-si-fiscale> [Accesat 18 Septembrie 2022]
4. CIOBANU, V., 2021. Restituirea fragmentară a aportului proprietarului în capital: aspecte fiscale în exemple, contabilsef.md, [online] Disponibil: <https://www.contabilsef.md/restituirea-fragmentara-a-aportului-proprietarului-in-capital-aspecte-fiscale-in-exemple/>
5. [Accesat 07 Octombrie 2022]
6. Legea privind societățile pe acțiuni nr. 1134 din 02.04.1997. În: *Monitorul Oficial al Republicii Moldova*. 2018, nr. 1-6 / 22 din 05.01.2018, cu modificările și completările la zi. Disponibil: https://www.legis.md/cautare/getResults?doc_id=131974&lang=ro# [Accesat 24 Septembrie 2022]
7. Legea privind societățile cu răspundere limitată nr. 135 din 14.06.2007. În: *Monitorul Oficial al Republicii Moldova*. 2018, nr. 1-6 / 22 din 05.01.2018, cu modificările și completările la zi. Disponibil: https://www.legis.md/cautare/getResults?doc_id=131768&lang=ro# [Accesat 24 Septembrie 2022]
8. Grigoroii, Liliana, ș. a. 2021. *Contabilitatea întreprinderii*. Manual. Editura: Chișinău Cartier, Ediția III.
9. MARTIN, C., ȚURCAN, N., 2020. Noi prevederi în reglementarea activității societăților pe acțiuni, Disponibil: <https://juridicemoldova.md/8599/noi-prevederi-in-reglementarea-activitatii-societatilor-pe-actiuni.html> [Accesat 07 Octombrie 2022]