THEORETICAL ASPECTS REGARDING THE TAX FACILITIES FOR ENTERPRISES IN ROMANIA AND SOME EU MEMBER STATES

Nicoleta MIHĂILĂ, PhD*

Abstract

Fiscal facilities are essential to the enterprise, because they influence the fiscal burden, reducing it, through mechanisms that act on the taxation basis, through the taxation rate or through the value of the actual fiscal payments.

The article aims to analyse conceptually the fiscal facility, which a specific form of economic facility. The paper also makes a typology of the facilities and compares them within the regional context. We used a descriptive methodology relying on several sources of information from specific journals and reports of European Commission.

Keywords: fiscal mechanisms, tax incentives, economic agents, European Union.

JEL Classification: G38, H25, H71

1. Introduction

The intervention of the state within the economy is requested because of the deficiencies encountered within it, by the economic and social contradictions. The fiscal measures hold an important place within these measures of intervention; their purpose is to stimulate investments and to adapt the economy to the requirements of the domestic and foreign markets, to ensure the economic stability and growth.

The fiscal mechanisms that influence the level of investments are rather different between the developed countries and the poor or developing countries.

The fiscal mechanisms include tax exemption or reduction or even reorganisation of the levying systems by fiscal reforms, in

---

* *Scientific Researcher III, "Victor Slăvescu" Centre for Financial and Monetary Research, Romanian Academy.*

relation with the economic and social situation that exists in a particular country at a given time, and the desired economic and social situation.

The regime of granting fiscal facilities to influence investments through tax exemption and reduction, as well as the manner of applying the taxation rates of the taxable matter, aims to stimulate the phenomena that are favourable to the economic activity (in agreement with the socio-economic and financial objectives of Romania), and to inhibit those phenomena that are hindering growth.

2. Theoretical aspects on the concept of facility

Generally, the role of a facility is to stimulate, motivate the accomplishment of an action. In time, the literature has given multiple definitions of the term of facility, but most definitions focus on the stimulation, enticement and motivation of people to perform a particular activity (Sargent, 1994, Enters 2001). At the same time, within the context of projects development, facilities have been described as “bribe” or “sweetener” (Smith, 1998).

Therefore, facility means motivating for the accomplishment of an action. Facilities differ, depending on the particular legislation, type of enterprise, aims, context of the action, expected behaviour (Easson, 2001).

According to FAO (2004), a facility must have several characteristic traits:

- It must be related to the size of the enterprise, to the nature and complexity of its activities,
- It must be properly documented and transparent,
- It must be in agreement with the business strategy, objectives, values and long-term interests of the enterprise.

There are several types of classification criteria for facilities:

<u>a. According to the manner of granting</u>:

- Facilities granted on the basis of directives, regulations;
- Facilities granted case by case – usually, these are additional incentives, granted for specific projects, following negotiations.

<u>b. According to the aimed purpose</u>:

- Universal facilities – aiming to boost the general economic activity, with no reference to particular activities or projects;
- Facilities dedicated to explicit purposes, such as:

• Regional development, particularly for the regions with poor economic situation;

• Job creation;

• Transfer of technology (in research-development related areas);

• Promotion of exports;

• Explicit drawing of foreign investors (incentives only for the foreign investors).

c. According to the impact on the users of resources:

- Direct facilities – designed to have immediate impact on the users of resources, with direct influence on the incomes; they are granted directly by the governments, development agencies, non-governmental organisations and the private sector,

- Indirect facilities - with indirect effect, by setting or modifying the general framework conditions within or outside the particular sector where the enterprise operates.

d. According to the content, we have economic, technological, managerial, social, environmental, commercial facilities.

e. According to the economic branch where the enterprise works: facilities in agriculture, extractive industry, processing industry, energy, constructions, transportation, education, healthcare.

f. According to the time horizon, we have long-term facilities and short-term facilities.

g. According to the interests of the users of financial information, there are facilities for the managers, for the investors, for the clients, for the employees.

h. According to the level of aggregation: individual and group, collective facilities.

Usually, the facilities have the following objectives:

- Economic development of the regions where the standard of living is very low, or which are severely affected by unemployment;

- Promote the accomplishment of an important project of joint European interest, or remediation of a serious economic disturbance within a member state;

- Facilitate the development of particular economic activities or of particular economic regions;

- Promote the culture and preserve the patrimony.

3. Fiscal facilities – definition and typology

The fiscal facility is a form of economic facility. According to the Fiscal code, it represents the amount of tax or of the tax not paid to the budget, according to the forms set by article 6, paragraph 9, letter g, i.e. the elements taken into consideration when estimating the taxable object, when determining the amount of the tax or due, as well as when cashing it, as partial or total tax exemption, or lower taxation rates, lower taxation basis, delay of the payment term, instalments.

For a SME, the fiscal facility means deduction, exclusion or exemption of a fiscal duty, provided as incentive to get involved in a specified activity (such as investment in capital goods) for a given period of time. Another definition presumes the application of fiscal incentives, credit, reform and regulation programs to clear the hindrances met when starting or developing a business (Van Parys, 2012).

In the specialized literature, Smith (2003) defines tax facility as deduction, exclusion, or exemption from a tax liability, offered as an enticement to engage in a specified activity such as investment in equipment goods for a certain period. Clark, Cebreiro and Bohmer (2007) define tax facilities as those special exclusions, exemptions, deductions or credits that provide special credits, a preferential tax treatment or deferral of tax liability. Klemm (2010) defines them as measures that provide for a more favorable tax treatment of certain activities or sectors compared to what is granted to the general industry.

According to Zee, Stotsky and Ley (2002), when investigating corporate taxation in developing countries, it is difficult to ignore the use of tax facilities. Although tax incentives are by no means unique to developing countries, it is worthwhile to address their role in developing countries separately, because some incentives are especially common in developing countries, as are some unique institutional features. Developed countries generally use targeted incentives that are embodied in the income tax law, while developing countries tend to use a combination of targeted and more general incentives, which may be included in the income tax law, the investment and other laws, or simply government decrees. Tax facilities do not require upfront use of government funds, which make them for developing countries preferable to financial incentives such as grants or subsidized loans that are more frequently employed in developed countries (UNCTAD 2000).

The fiscal facilities come in different forms, as follows:

- General / particular (specific),
- Qualitative (simplification/ reduction of statements) or quantitative,
- Input (fiscal credits and increased allowances, tax accelerated depreciation), and output facilities,
- Growth/incremental facilities,
- Temporary/permanent facilities,
- Depending on the type of tax: facilities for the profit, for personal income, wages, value added, property,
- Depending on company characteristics:
    • by size (micro, small, medium, large), number of employees, turnover;
    • by the geographical area where the company operates, area which can be favoured or disfavoured;
    • by the field of activity - agriculture, tourism, constructions, services, etc.
    • depending on company's „health" (as shown by the economic-financial indicators): good, in difficulty. There can be bailout facilities or reorganisation facilities.

The main objectives of the fiscal facilities are:

- Regional development, higher rate of labour force employment, consolidation of a stronger economic environment, more attractive for the investors;
- Supporting the development of SMEs sector, support the youth to start small and medium enterprises, stimulate the economic agents which undertake economic processes with multiplication economic and social effects, making long-term fiscal benefits for the local budget;
- Increasing the revenues from collected taxes;
- Stimulate the tax compliance, maximizing the collection of taxes to the budget, stimulation of the economic environment and decrease of budget arrears, which is beneficial to the whole society.

However, these fiscal facilities may also have adverse effects (risks):

- The companies might relay too much on the fiscal facilities instead of finding, by own forces, or by other support means, ways to start/continue/expand their activity;
- A rather low number of enterprises which don't give up functioning after the facilities end; most of such companies operating in disfavoured areas cease their activity;
- The risk of failing to develop particular sectors of activity, or to specialise/ change of profile in particular economic sectors, and isolation of the activities performed within those areas.

The research-development incentives for SMEs are limited to the enterprises that meet the eligibility criteria according to EU Regulation 2003/361, which classifies the different incentives and their availability for large, middle, small and micro enterprises. According to this recommendation, classification is done by three main criteria: number of employees, annual turnover and total balance sheet. While the total number of staff is a compulsory limit, the enterprises must meet just one of the other two eligibility criteria to qualify as SME.

Most fiscal incentives target the microenterprises and the small enterprises. The medium enterprises generally receive research-development incentives.

Tax facilities for the SMEs are not implemented as much as those for research-development. The fiscal credits, the additional deductions, the accelerated depreciation are rare and often conditioned by the criterion of restrictive eligibility.

Most of the fiscal facilities target the microenterprises and the small enterprises. The medium enterprises generally receive research-development incentives. They should not depend on enterprise size; rather they should encourage innovation and investments.

The manner of "action" of the fiscal facility when calculating the fiscal duty is as follows (European Commission, 2015a):

Taxable basis × Taxation rate = Due tax

Taxable basis
(Specific facilities: accelerated depreciation, deduction of investments, options with expenditure capitalisation)

↓ ×

Taxation rate
(Specific facilities: lower tax rates, special treatment – for situations such as innovation, patents)

↓ =

Due tax
(Specific facilities: fiscal credits (growth/incremental), temporary tax exemption)

Source: European Commission, 2015a

The different fiscal facilities differ in the mechanisms by which they influence the fiscal burdens. They may reduce the taxation basis, the taxation rate or the value of the actual fiscal payments. The special depreciation rates, the options to capitalise the expenditures and the additional allowances/deductions according to the volume of investments change the taxation basis. The fiscal credits have similar effects with the allowances, but are deducted directly from the due tax, instead from the taxation basis (Brezeanu, 2009).

The special tax rates and treatments for particular types of incomes differ from the above-mentioned facilities, because they are related to the result of the company. Both measures are usually granted irrespective of the level of investment.

In terms of good practices, the applied measures should be evaluated on the basis of the following criteria:

- Efficacy: the fiscal incentive should allow the enterprise to increase the liquidity and to make additional investments.

- Neutrality of the fiscal system: the enterprises should benefit of the incentive irrespective of their legal form. The eligibility thresholds regarding the size of enterprises are a stimulus to remain small, because the enterprises want to remain eligible. Therefore, the fiscal incentives targeting the SMEs introduce undesired distortions into the fiscal system.

- Transparency for the investors: the size of the facility should be predictable for the investors. This allows them to consider properly the facilities when making the decision to invest.

- Flexibility for the fiscal regulators: the losses of fiscal revenues should be predictable for the legislators. Moreover, the administrative costs should be easily to manage.

4. Fiscal facilities in the regional context

In Romania, the main fiscal facilities, according to the Fiscal Code, are:

- Exemption for the reinvested profit – the profit reinvested in the production or purchase of technological equipment is exempt from taxation. The method of accelerated depreciation cannot be applied for these assets. The taxpayers must keep them in their patrimony at least for a period equal with half their economic life, according to the applicable accounting regulations, but no more than 5 years; otherwise, the tax on profit is recalculated, plus interests and delay penalties for the particular amounts.
- Research-development expenditure, 50% additional deduction of the eligible expenditures, when calculating the taxable profit. The method of fast depreciation is applied for the instruments and equipment intended for research-development activities.
- Reinvested dividends. They are exempt from the payment of the tax on dividends:

• Dividends reinvested starting with 2009, with the purpose to preserve and create new jobs for the development of the activity performed by the Romanian legal persons distributing dividends, according to their object of activity recorded with the National Commerce Registry.

• Dividends invested in the social capital of another Romanian legal person, with the purpose to create new jobs and to develop its activity, according to their object of activity recorded with the National Commerce Registry. Although in force since January 1st, 2009, no additional norms for the application of this incentive have been issued.

- Employment facilities. Incentives granted for the employment of unemployed persons, specific incentives for the employment of particular social categories (for instance, young graduates, unemployed persons, single parents supporting their families, unemployed people who meet the legal requirements for partial early retirement or for the age limit retirement, people with disabilities, students working during the holidays). These incentives are granted on condition of meeting the legal eligibility criteria.

- Incomes from wage, for the creation of software. Tax exemption for the incomes resulted from writing software, according to the legal stipulations.
- Local taxes. The local authorities can grant tax exemption for the tax on land and buildings.

The main fiscal facilities granted to the enterprises, in the European Union, are:

- Accelerated depreciation;
- Deduction of investments and allowances;
- Fiscal credits;
- Special treatment for particular types of incomes;
- Special tax rates.

Of these, the special tax rates are most common within the surveyed countries. The schemes for accelerated depreciation, the deduction of investments, the exemptions and fiscal credits are less frequently used.

The table below (Table 1) shows that most EU member states have fiscal facilities both for the SMEs and for the research-development activities.

Table 1

Facilities for research-development and for SMEs within some European Union countries

Country		SME	R&D
1.	Austria		
2.	Belgium		
3.	Bulgaria		
4.	Croatia		
5.	Estonia		
6.	Finland		
7.	France		
8.	Germany		
9.	Greece		
10.	Ireland		
11.	Italy		
12.	Lithuania		
13.	Luxemburg		
14.	Poland		

Country		SME	R&D
15.	Romania		
16.	Slovenia		
17.	Spain		
Total		**12**	**14**

Source: European Commission, 2015b.
Notes: the grey-coloured cells means that the country has fiscal facilities

Taking into consideration the frequency of utilization, the deductions for investments and the fiscal credits are the most common ways to stimulate the research and development activity. Generally, the incentives are volume-based, which means that the expenditure for qualification is taken into consideration when determining the deductible amounts.

Most credits and allowances refer to the occasion expenditures, such as material costs and costs for the employees. Also considered are the capital expenditure (investments in fixed assets). Several types of expenditures are frequently included. There are dispositions referring exclusively to the expenditure with the staff employed in research-development activities.

Regarding the deductible percentage, most fiscal credits vary between 10% and 40%, while the deductions exceed 50% on many occasions. The deductions are particularly high when only the occasional expenditure is taken into consideration (99,5% in average, in contrast with 67,1% for allowances, including the capital expenditure). Some countries grant fiscal credits and allowances/ bonuses as exclusive mutual alternative solutions (for instance, Austria and Belgium).

The accelerated depreciation regimes are another usual measure taken to stimulate research and development activities. Since the scheme refers to different assets, it is difficult to identify a typical interval of depreciation instalments. The percentages vary from 10% (Spain, just for buildings), and 100% (linear depreciation). The eligible assets include equipment and instrumentation in almost all the countries, as well as non-corporal assets, buildings or land.

The income tax exemption and the special tax rates form the last important group of fiscal incentives for research-development activities. In Europe, these forms of facilities are usually set for the incomes from intellectual property rights. The fiscal payments are deducted by 50% to 80% (Netherlands, Spain have recently expanded their incentives).

Overall, most countries set various forms of fiscal incentives for research-development activities (except for Bulgaria, Estonia, Germany and Spain). The existing incentives became more generous lately. Expanded incentives are available particularly in Belgium, France, Netherlands and Spain.

Table 2 and Table 3 (see the Appendix) provide an overlook of the tax incentives that are in force in EU countries. The same five types of incentives used for research-development activities can also be noticed for the SMEs. The special tax rates are the most used form used by the surveyed countries. The accelerated depreciation schemes, the deduction of investments, tax exemption and fiscal credits are less frequently used.

The use of fiscal credits for the SMEs is even less common than the deduction of investments. The eligibility for the latter is usually limited to specific regions and activities. The rates vary between 5% and 20%, and the credits are mainly for capital or for revenue expenditure. In some cases, fiscal credits are conditioned by the employment levels.

The special taxation rates are, by far, the most popular forms of fiscal facilities for the SMEs. However, they differ significantly in terms of generosity. While Luxemburg, for instance, grants a very small reduction (1%) up to a comparable lower threshold of 15.000 Euro, the small and micro enterprises from other countries, might have taxation rates of 50% from the standard rate. In most cases, the lower rates amount to 50%-80% from the taxation rate for the large companies. Compared to other incentives, the special taxation rates are less frequent, limited to particular activities or regions. However, all of them are directed exclusively towards microenterprises in most countries (not to small and medium enterprises). Romania has a special situation: the microenterprises can choose to pay taxes according to the turnover. (starting with 2016, the criterion is the number of employees).

The income tax exemption is less used than the special tax rates. Same as with other incentives, they are mainly restricted to very limited situations. Generally, they appear as investment reserves that have to be reinvested.

Comparing the fiscal incentives for the SMEs with those for research-development activities, it can be seen that the SMEs benefit of less fiscal exemptions. The countries with acting various incentives are Belgium, Spain and France. Several noteworthy trends are visible:

• Despite their unfavourable properties, the special taxation rates are the predominant fiscal measure supporting the SMEs. All the other instruments are very limited in their area of application. Therefore, they are expected to serve the promotion of very specific activities, specific areas and taxpayers. The research-development activities benefit more frequently of fiscal credits and allowances, which have more favourable characteristics for the fiscal legislators and for the investors (European Commission, 2014).

• The member states don't limit uniformly the eligibility for fiscal incentives for the SMEs by referring to the criteria used in SMEs definition by the European Commission (i.e. number of employment, turnover and total balance sheet). The special taxation rates are usually related to particular income levels.

• There is discrimination between the middle, small and microenterprises. In the EU member states, 12 incentives target all the SMEs, 16 target mainly the small and microenterprises and 9 target just the microenterprises. Exclusive eligibility for microenterprises appears mainly for the specific tax rates.

• There are countries which grant incentives for the SMEs according to criteria regarding the employment rate, or incentives for the newly-established enterprises.

• The qualitative analyses cannot determine whether the fiscal incentives for research-development SMEs decrease the actual fiscal burden of the SMEs, and how much.

5. Conclusion

The paper presented the concept of facility and the derived concept of fiscal facility, its typology and the main incentives granted in EU member states.

The fiscal facilities are usually granted by the governments in order to support the activity of enterprises. Their purpose also is to help the establishment of a company, to pass over specific barriers/obstacles caused by a specific economic situation, unforeseen event, or when the company is confronted by unfavourable financial situation.

The fiscal facilities refer to the type of economic agent (micro, SME, large), type of region, branch, sub-branch, type of taxation basis, income, expenditure, profit.

The fiscal facilities differ in the mechanisms by which they influence the fiscal burdens. They may decrease the taxation basis, the taxation rate or the value of the actual fiscal payments. The fiscal facilities for the SMEs are not that frequently implemented as those for research-development. The fiscal credits, the additional deductions and the accelerated depreciation are rare and often conditioned by criteria of restrictive eligibility.

Most fiscal facilities target the microenterprises and the small enterprises. The medium-size enterprises benefit of facilities for research-development. These facilities should not depend on the company size; they should promote innovation and investments.

All fiscal incentives must meet several basic requirements such as transparency, efficacy and neutrality.

In the European Union, the main fiscal facilities granted to the enterprises are: accelerated depreciation, deduction of investments and allowances, tax credits, special treatment of particular incomes, special taxation rates. Of them, the special taxation rates are most common among the EU member states. The accelerated depreciation schemes, the deduction of investments, exemptions and fiscal credits are less frequent.

Still, tax facilities do have some drawbacks, as:

- they will not benefit a company in its early stage because such a company will still be making losses anyway.

- they are short term whilst investments are long term, thus the use of tax incentives will not benefit the company in the long run when support is really needed.

- they are prone to abuse by authorities in charge of approving or monitoring the applications for such incentives.

- an alternative will be to apply minimal tax rates to all industries as compared to resorting to tax incentives to targeted industries.

References

1. Brezeanu, P. (2009), “Taxation. Concepts, theories, policies and practical approaches”, *Wolters Kluwer Publishing House*.

2. Clark, S., Cebreiro, A. and Bohmer, A. (2007), "Tax Incentives for Investment- A Global Perspective", *OECD Working paper*, USA.
3. Easson, A. (2001), "Tax incentives for foreign direct investment Part I: recent trends and countertrends." *Bulletin for International Fiscal Documentation.*
4. Enters, T. (2001), "Incentives for soil conservation." In E.M. Bridges, I.D. Hannam, S.J. Scherr, L.R. Oldeman, F.W.T. Penning de Vries and S. Sombatpanit, eds. *Response to Land Degradation*. New Delhi and Calcutta, Oxford and IBH Publishing Co. Pvt. Ltd. pp. 351-360.
5. European Commission (2014), *Study on R&D Tax Incentives*.
6. European Commission (2015a), "SME taxation in Europe – An empirical study of applied corporate income taxation for SMEs compared to large enterprises", *DG for Internal Market, Industry, Entrepreneurship and SMEs, European Commission*.
7. European Commission (2015b), "Annex 1 SME taxation in Europe- An empirical study of applied corporate income taxation for SMEs compared to large enterprises", *DG for Internal Market, Industry, Entrepreneurship and SMEs, European Commission.*
8. FAO (2004), "The role of incentives in forest plantation development in Asia and the Pacific", *Asia-Pacific Forestry Commission*, Bangkok.
9. OECD (2011), "Tax Reform Options: Incentives for Innovation. The International Experience with R&D Tax Incentives". *Testimony by the Organization for Economic Cooperation and Development United States Senate Committee on Finance*, 20 September. Available at: http://www.finance.senate.gov (data accessed: 10 June 2016).
10. Smith, F.J. (2003), "Conducting your Pharmacy Practice Research Project", *Pharmaceutical Press*, London.
11. Smith, P. (1998), "The use of subsidies for soil and water conservation: A case study from Western India". *Network Paper No. 87. London, Agricultural Research & Extension Network*. Overseas Development Institute.

12. UNCTAD (2000), “Tax incentives and foreign direct investment, a global survey”, *ASIT advisory studies No 16, UN, New York and Geneva.*
13. Van Parys, S. (2012), “The effectiveness of tax incentives in attracting investment: evidence from developing countries”, *In: Reflets et perspectives de la vie économique 2012/3 (Tome L*I), pp. 129-141. (available at: http://www.cairn-int.info/).
14. Zee, H.H., Stotsky, J.G., Ley, E. (2002), “Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries”, *World Development* Vol. 30(9).
15. *** Law No. 571/2003 on the Fiscal Code, as amended and supplemented.

APPENDIX

Table 2

Fiscal facilities for the SMEs

Country	**Accelerated depreciation**	**Deduction of investments**	**Fiscal credits**	**Tax exemption**	**Special tax rates**
Austria	-	-	-	-	-
Belgium	200%	11.5% 3.5% (3%)	-	37.500 euro	24,25%-33,33% (33%)
Bulgaria	-	-	-	-	-
Croatia	-	70%/35% (50% /25%)	-	-	10% (20%)
Estonia	-	-	-	-	-
Finland	150%	-	-	-	-
France	-	-	20% 0%-15% 50% 20%	100%/50% 100%/50%	15% (34,43%) 13%/23% (34,43%)
Germany	20%	40%	-	-	-
Greece	-	-	-	25%-45% (15%-40%)	15%/20% (25%)
Ireland	-	-	-	0-40.000 euro	-
Italy	-	-	-	-	-
Lithuania	-	-	-	-	5% (15%)
Luxemburg	-	-	-	-	20%-21% (21%)
Netherlands	-	0-28%	-	-	-
Poland	100%	70%/60% (50%)	100% 75%	-	-
Romania	-	-	-	-	3%
Slovenia	-	-	-	-	-
Spain	100% 300%/200%	-	3000 euro 10% 6%	-	20%/25%/24% (30%-28%)
Sweden	-	-	-	-	-

Source: European Commission, 2015b

Table 3

Fiscal facilities for research-development in SMEs and large companies

Country	Accelerated depreciation	Capitalization of R&D expenditure	Investment deduction	Tax credits	Tax exemption	Special tax rates
Austria	-	-	25% 35% 25%	10%	-	-
Belgium	33.33%	-	14.5%	100%	80%	-
Bulgaria	-	-	-	-	-	-
Croatia	-	-	150%/125%/100%/75%	-	-	-
Estonia	-	-	-	-	-	-
Finland	20%	2-10 years	100%	-	-	-
France	250%/200%/150%	2-5 years	-	30%/5% 60%/10% 20%	100%/50%	15,5% (34,43%)
Germany	-	-	-	-	-	-
Greece	-	2-5 years	50%	-	-	-
Ireland	100%	-	-	25%	100%	-
Italy	-	5 years	100%	35%/90%/10%/40%	-	-
Lithuania	≥ 50%	-	200%	-	-	-
Luxemburg	133.3%	-	-	-	80%	-
Netherlands	Free depreciation	-	54%	-	-	5% (25%)
Poland	-	≥1 year	50%	-	20%/100%	-
Romania	50%	-	50%	-	-	-
Slovenia	33.33%	-	100%	-	-	-
Spain	Free depreciation 10%	5 years	-	8%/12%/25%/17%	60%	-
Sweden	-	-	-	-	-	-

Source: European Commission, 2015b