

DIVIDEND ACCOUNTING - LEGAL AND TAX ISSUES

*Lucian Constantin Gabriel Budacia**

Abstract

In the situation in which a company registered a profit in the financial year ended, a form of use of the profit is the distribution of dividends. Dividends represent a distribution in cash or in kind, made by a legal entity to a participant (shareholder / associate), as a result of holding shares in that entity. The award of dividends can be seen as a process, the steps of this process are described in this article.

In order to approach the payment of dividends in foreign currency (by a company with capital in lei, which carries out activities with payment in lei), the accounting regulations in force are taken into account. If some of the associates, Romanian or non-resident individuals, want the payment of the amounts from the dividends to be made in foreign currency, the operation is possible, only that in the decision of the general meeting of dividend distribution to be specified as the amount distributed in lei, to be paid in foreign currency, the conversion being carried out according to the exchange rate of the NBR.

Keywords: Dividend, dividend tax, distribution of profit

JEL Classification: M41, K34.

Conceptual aspects regarding dividends

In the situation in which a company registered a profit in the financial year ended, a form of use of the profit is the distribution of dividends. Dividends represent a distribution in cash or in kind, made by a legal entity to a participant (shareholder / associate), as a result of holding shares in that entity. Approaching the issue as a process, with distinct stages, these are:

a) **Consultation of the Constitutive Act** - to identify the associates and their participation percentages in profits and losses;

b) **Retained earnings** - identifies in the accounting records the retained earnings from previous years that can be distributed in the form of dividends (for annual dividends) or taking into account the net income for the current year (for quarterly dividends).

* Lucian Constantin Gabriel Budacia is Lecturer at the Romanian American University in Bucharest. E-mail: budacia.lucian.constantin@profesor.rau.ro.

c) **GMS Decision** - the GMS takes place, following which the GMS Decision for the distribution of the result is drawn up and approved;

d) **Distribution of dividends** - dividends are distributed, the tax due is calculated;

e) **Payment of dividends** - the net dividends of the associates are paid by the chosen method. Dividends can be distributed in cash, in foreign currency and in kind.

f) **Declaration 100** - is drawn up and submitted by the 25th of the month following the month in which the dividends were distributed;

g) **Payment of 5% tax** - the tax on dividends withheld until the 25th of the month following the month in which the dividends were distributed is paid;

h) **Declaration 205** - declaration 205 is drawn up for the tax withheld for resident individuals receiving dividends (until February 28 of the following year).

A special mention must be made: if the income earned (excluding income from salaries) exceeds the level of 12 minimum wages per year, the natural person is required to submit a single declaration by March 15 of the following year, on the basis of which he will pay contribution to health. The CASS (social health insurance contribution) applies to the 12 minimum wages, and the deadline is March 15 of the following year.

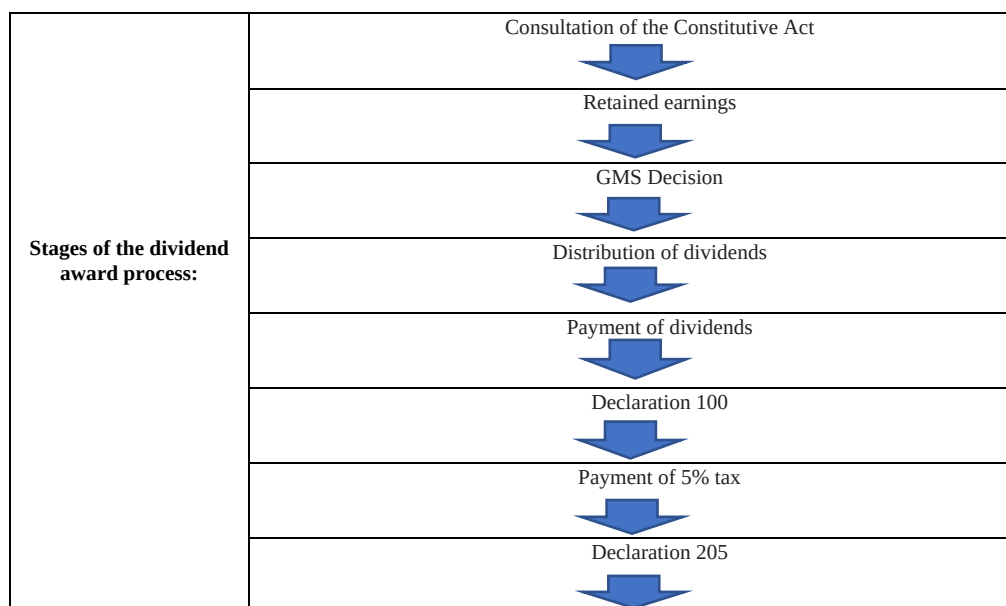


Fig. no. 1: Stages of the dividend award process

Payment of dividends in foreign currency

In order to approach the payment of foreign currency dividends (by a company with capital in lei, which carries out activities with payment in lei), the accounting regulations in force, approved by the Accounting Law no. 82/1991, republished, with the subsequent modifications and those of OMFP no. 1802/2014 on individual annual financial statements and consolidated annual financial statements, as subsequently amended.

If some of the associates, Romanian or non-resident individuals, want the payment of the amounts from the dividends to be made in foreign currency, the operation is possible, only that in the decision of the general meeting of dividend distribution to be specified as the amount distributed in lei, to be paid in foreign currency, the conversion being made according to the exchange rate of the NBR valid on the date of payment. In case the company has money in foreign currency accounts, things are simpler, if it has the amounts in lei, obtaining the currency necessary to pay foreign currency dividends to the associates can be done by foreign exchange auction, the bank where the company has open current accounts can perform the operation of buying currency by selling lei, which represents the value of dividends due to associates. The resulting exchange rate differences are not recorded in the company's accounting records, they are borne by the associates who receive the dividends in foreign currency. In this situation, the associates will see the value of their dividends in lei eroded as a result of the foreign exchange exchanged on the date established by the decision of the general meeting.

Due to the fact that the obligation to pay the company to the associates is determined in lei, according to the accounting regulations in force, the change of the exchange rate must not affect the company's patrimony the meaning of its decrease as a result of applying the exchange rate. This currency risk and the related expenses (commissions) must be borne by the associates who have decided so. Otherwise, it will record a non-deductible and even illegal expense from the perspective of the Companies Law no. 31/1990. The accounting records do not record the valuation of the debt to the respective associates according to the exchange rate of the foreign exchange market and there are no exchange rate differences because it is recorded in lei.

For example, I will consider the fact that a company has to pay dividends amounting to 30,000 lei. In the accounting records, the distribution of dividends in national currency and their payment in foreign currency is made as follows:

1. Distribution of dividends on the date of approval by the general meeting		
1171 "Deferred income representing distributed profit or uncovered loss"	457 "Silver dividend"	30.000 lei
2. Dividend tax registration		
457 "Silver dividend"	446 "Other taxes, fees and similar payments"	1.500 lei
3. Dividend payment - the exchange rate communicated by the NBR is 4.82 lei / euro.		
3.1 Payment of dividend tax		
446 "Other taxes, fees and similar payments"	5121 "Bank accounts in lei"	1.500 lei
3.2 Plata efectivă a dividendelor (30.000 lei – 1.500 lei) : 4,82 lei / euro = 5.912,86 euro		
457 "Silver dividend"	5124 "Bank accounts in foreign currency"	5.912,86 euro

If the payment is made following the foreign exchange auction, there are no exchange rate differences because this operation is recorded in the accounting at the exchange rate used by the respective commercial bank. In this case, too, the regulations of Law no. 70/2015 for strengthening the financial discipline regarding the operations of cash receipts and payments, namely, that the inclusion in the daily ceiling of 10,000 lei to a person must be respected, with the mention that fragmented cash payments are prohibited.

Conclusions

Dividends are distributed to shareholders in proportion to the share of paid-in share capital, optionally quarterly based on interim and annual financial statements, after regularization through the annual financial statements, unless otherwise provided in the articles of association. They may be paid optionally on a quarterly basis within the time limit set by the general meeting of shareholders or, as the case may be, by special laws, the differences resulting from the distribution of dividends during the year being settled through the annual financial statements. Payment of differences resulting from regularization shall be made within 60 days of the date of approval of the annual financial statements for the financial year ended. Otherwise, the company owes, after this term, a penalty interest calculated according to art. 3 of the Government Ordinance no. 13/2011 regarding the legal remunerative and penalizing interest for monetary obligations, as well as for the regulation of some financial-fiscal measures in the banking field, approved by Law no. 43/2012, with the subsequent completions, if by the constitutive act or by the decision of the general meeting of

shareholders that approved the financial statements related to the closed financial year, a higher interest rate has not been established.

In the event of a partial distribution of dividends between shareholders or shareholders during the financial year, the annual financial statements will highlight the partially allocated dividends and will settle the resulting differences. If the shareholders or shareholders owe dividend refunds, as a result of the adjustment made in the annual financial statements, they are paid to the company within 60 days from the date of approval of the annual financial statements.

Otherwise, the associates or shareholders owe, after this term, a penalty interest calculated according to art. 3 of the Government Ordinance no. 13/2011, approved by Law no. 43/2012, with the subsequent completions, if by the constitutive act or by the decision of the general meeting of shareholders that approved the financial statements related to the closed financial year, a higher interest rate has not been established.

Bibliography:

1. Popa, Adriana Florina, Păunescu, Mirela, Ciobanu, Radu (2019), *Fiscalitate*, ediția a II-a, Editura CECCAR, București.
2. Hotărârea Guvernului nr. 1/2016 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 227/2015 privind Codul fiscal, publicată în Monitorul Oficial nr. 22/13.01.2016, cu modificările și completările ulterioare.
3. Legea societăților nr. 31/1990, republicată în Monitorul Oficial nr. 1066/17.11.2004, cu modificările și completările ulterioare.
4. Legea contabilității nr. 82/1991, republicată în Monitorul Oficial nr. 454/18.06.2008, cu modificările și completările ulterioare.
5. ** Cartea verde a contabilității, (2020) Rentrop & Straton.