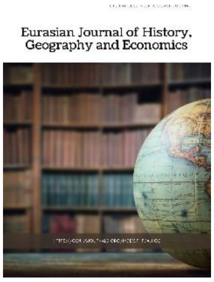

Changes in the System of Sole Properties Taxation Process

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ABSTRACT

The transfer of a business consists in the transfer of all its assets or shares to a third party.

Keywords: sole proprietorship , partnership

The **transfer** of a business consists in the transfer of all its assets or shares to a third party.

When a **sole proprietorship** is transferred, the business assets change from being the private assets of the transferring entrepreneur to being the private assets of the transferee.

The transparency of the transfer of **partnership** shares makes it similar to the transfer of a sole proprietorship as the partnership's assets also change from being the private assets of the transferring partners to being the private assets of the transferees.

Once the **taxable profit** has been determined (operating profit and profit from the termination/transfer of the business), the transferring partners/entrepreneur must pay **personal income tax**.

Who is concerned

If the transfer of a sole proprietorship or partnership is carried out in exchange for consideration, the tax on **profits from the transfer** must be paid by:

- the **entrepreneur** in the case of a **sole proprietorship**;
- the **partners** in the case of a **partnership**.

Preliminary steps

Traders (**natural persons**) wishing to transfer their business must report the termination of activity to the bodies and administrations with whom they are registered.

Where applicable, the **manager/administrator** who is leaving the company must notify their departure to the various bodies where they are registered.

How to proceed

TRANSFER IN EXCHANGE FOR CONSIDERATION

If a sole proprietorship or partnership is transferred in exchange for consideration, the entrepreneur or partners pay tax on:

- the **operating profit** (current profit);
- and the **profit on the transfer of the business** (capital gains) made at the time of the transfer.

Operating profit

The business must calculate its operating profit for the period from the end of the last financial year to the transfer date.

These earnings must include any tax-exempt capital gains, i.e. capital gains on the transfer of real estate assets that have been reinvested, resulting in the tax on these gains being temporarily differed.

If the **operating result** for the financial year in which the transfer takes place is **negative** after accounting for losses carried forward, the current operating loss will be **offset** against the profit made on the transfer.

Transferors and transferees are jointly liable for payment of:

- of the communal business tax (ICC);
- and VAT.

Profit arising from the sale of a business

The profit on the transfer is calculated by deducting the adjusted value of the invested net assets of the business on the transfer date from the transfer price.

Profit on the transfer = transfer price - invested net as:

Calculating the profit on the transfer allows any unrealised capital gains to be disclosed.

If the capital gains include **gains on real estate** (land or buildings), the taxpayer may **revalue these assets** by applying the ratios corresponding to the inflation rates for the financial years concerned to the:

- purchase price or cost price of the property;
- amortisation and deductions for depreciation according to the ratios applicable to every year included in the amortisation period.

The taxpayer may then request a **tax exemption** for capital gains on these real estate assets up to their revalued amount.

Revaluation = adjusted book value – net book value.

Taxable profit on the transfer

Taxable profit on the transfer = profit on the transfe

In certain circumstances, the taxpayer may benefit from tax allowances applicable to the realised profit on the transfer, namely:

- an allowance of EUR 10,000 or a proportional share of that amount, depending on whether the transfer (or termination of activity) relates to the whole business or to an autonomous part or fraction thereof;
- or an allowance of EUR 25,000 if the profit on the transfer or termination of activity includes capital gains made on real estate.

Personal income tax

The entrepreneur must mention the following in their personal income tax return:

- **current operating profit**:
  - under **business profit**;
  - or in the category **agricultural or forestry profit**;
  - or in the category **profit from the exercise of a liberal profession**;
- and the **profit on the transfer** (capital gains) in the category **extraordinary income**.

Capital gains realised at the time of the transfer/termination of activity are taxable at half the overall rate.

FREE TRANSFER

The free transfer of a sole proprietorship or partnership has tax implications for both the transferor and the transferee.

Former owner (transferor)

As a free transfer does not increase the former owner's ability to pay taxes, they benefit from a **tax deferral** meaning that:

- the transferor only pays tax on the **current profit** made up until the transfer date, based on the ordinary tax scale;
- they cannot revalue their fixed assets or benefit from transfer tax allowances.

They transfer **unrealised capital gains** to the transferee without paying tax, whether the transferee is a spouse or third party and whether these capital gains are derived from fixed or current assets.

If the result of this transfer is **negative**, the former owner may deduct the losses they have incurred from their overall income as special expenditure. They may carry forward these losses if they are not offset by other net income during the financial year.

Only the transferring owner may deduct the loss they have incurred. However, in the case of **transfer through inheritance**, the successor may defer the losses incurred by the deceased if, at the time the loss was made, the two parties were subject to joint taxation (spouse or children).

New owner (transferee)

The transferee continues the activity undertaken by the transferor. Their **opening balance sheet** will show the invested *net asset values* and any tax-exempt capital gains as they appear on the **closing balance sheet** of the former owner.

The **initial asset values** will serve as a basis for the calculation of:

- tax-deductible depreciation;
- any **capital gains** from a subsequent transfer.

In such cases, the transferee may need to pay VAT or registration fees on the transfer of ownership of certain assets.