

**CASE STUDY ON THE MODIFICATION OF THE TAX BURDEN IN THE HOTEL AND RESTORATION INDUSTRY, IN THE CONTEXT OF THE INCREASE IN TAX PRESSURE GENERATED BY GEO NO. 16/2022**

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*Abstract: The proposed Article sets out the tax burden on economic entities operating in the hospitality industry in terms of income taxation. We have presented theoretical legislative aspects regarding the specific tax trim, which remains in its full action until the end of the financial year 2022, but also illustrative examples that provide accurate information on the fiscal pressure felt by these economic operators. The prospect of increasing tax pressure in this industry is becoming clearer, following the amendment of the primary legislation in the field of taxation of these economic operators. Thus, the idea of applying the tax specific to these activities is abandoned by shifting to another form of income tax.*

**Key words:** *hospitality industry, specific tax, microenterprise income tax versus corporate tax, tax burden, tax pressure*

## **INTRODUCTION**

HoReCa is a sector of the national economy that expresses an abbreviation for 3 words Hotels, Restaurants and Cafes (Catering), being most widely used in Europe, namely in Scandinavia (Sweden, Norway, Denmark, Iceland and Finland), the Benelux countries (Netherlands, Belgium and Luxembourg) and France. This term is used in the hospitality industry to convey very clearly an activity that simultaneously refers to accommodation and catering (food and drink) services.

Starting from 2017, according to Law no. 170/2016, Romanian legal entities paying profit tax that carry out accommodation and catering activities are obliged to pay the specific tax. In this sense, on April 14, 2017, the Order of the Minister of Tourism and the Minister of Public Finances no. 264/464 for the approval of the methodological rules for the application of this law [11].

The purpose of this article is to present this type of tax applied to entities in the HoReCa sector, whose existence ends on 31.12.2022, according to the provisions of GEO no. 16/2022 amending the Fiscal Code, and replaces it with the profit tax or the income of micro-enterprises. Also, some illustrative examples are presented from which we can draw certain opinions regarding the change in the tax burdens of entities in the hospitality industry [10].

## **MATERIAL AND METHODS**

Studying the fiscal behavior of economic operators operating in the hospitality industry is a concern for us, given the implications it propagates for the Romanian citizen's leisure options [13]

A field strongly affected by the pandemic period, the hospitality industry recorded

- a decrease in turnover in 2020 compared to 2019 by 35% in relative terms, and in value terms from 27.5 billion in 2019 to 17.9 billion in 2020;

- the number of employees in hotels and restaurants decreased in 2020 compared to 2019 from 186,000 lei to 150,000 employees [14];

- The net profit recorded by companies in the HoReCa industry that are in surplus decreased by 46.5% to 2.49 billion lei in 2020, compared to 4.65 billion lei in 2019 [15].

But not only the HoReCa industry itself is relevant in this analysis; its interconnection with other economic activities gives it a significant contribution to the evolution of some companies that develop businesses in related fields, such as agriculture, local suppliers of ingredients, producers and distributors of raw materials in the kitchen, importers and distributors of food products, dedicated service providers industry, as well as management systems, cleaning, transport, logistics, packaging.

Taxation constitutes the set of obligations to the tax office, as well as the means of collecting them, the regulations and practices relative to them. The immediate effect of the action of taxation is the encumbrance of the income of the payers, and from this perspective taxation creates constraint, pressure, sacrifice for them [3].

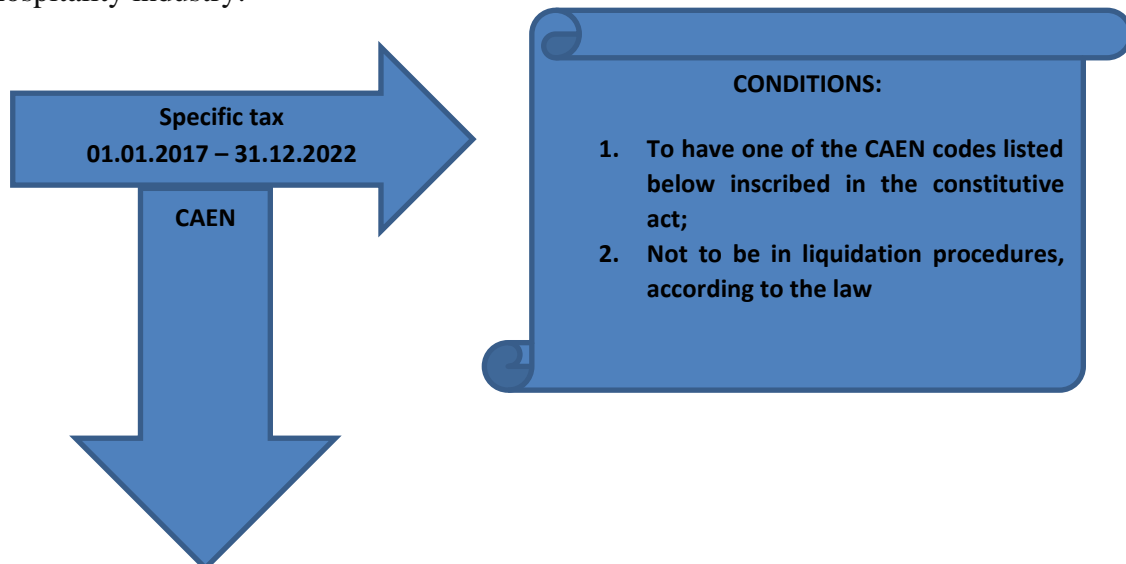
The tax is a form of forced collection at the disposal of the state, without direct consideration and with a non-refundable title, of a part of the income or wealth of natural and/or legal persons, in order to cover some public needs.

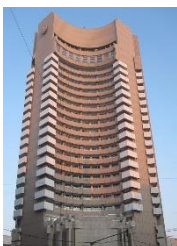
The documentary material we have referred to is the primary legislation we have regarding the direct taxation of the hospitality industry. This legislative package includes:

- Law no. 170/2016 regarding the specific tax for certain activities;
- The fiscal code approved by Law no. 227/2015;
- OMT no. 264/464/2016 for the approval of the Methodological Norms for the application of Law no. 170/2016 regarding the specific tax of certain activities [8].

The methods used by us to capture the fiscal pressure created on economic operators in the hospitality industry sector are descriptive and quantitative, relevant in this regard being the indicators of fiscal pressure. We have also used the method of analysis and comparison, given the change in the taxation system in the hospitality industry sector, through which we will analyze and compare the taxes owed today against those that will follow starting from the financial year 2023.

The tax legislation that currently governs the taxation of earnings in the hospitality industry is Law no. 170/2016 regarding the specific tax. It falls under the scope of the hospitality industry:





5510 "Hotels and other similar accommodation facilities"  
5520 "Accommodation facilities for holidays and short periods"  
5530 "Caravan parks, campsites and camps"  
5590 "Other accommodation services"



5610 "Restaurants"  
5621 "Food activities (catering) for events"  
5629 "Other food services"



5630 "Bars and other activities serving drinks"

The following criteria were taken into account when establishing the taxable matter:

a. Useful commercial/serving area for CAEN codes 5610 "Restaurants" and 5630 "Bars and other restaurant service activities", defined as the sum of the areas of lounges, terraces and summer gardens, according to the classification/authorization certificate [13];

b. The useful area for carrying out the activity specific to CAEN codes 5621 "Food activities (catering) for events", 5629 "Other food services n.e.c.", defined as the total built area, according to the classification/authorization certificate [6].

#### **Determination of tax for restaurants**

**Payers: restaurants, catering, other public food services**

**Calculation formula:**

$$I_{sa/unitate} = k \times (x + y \times q) \times z$$

where:  $k = 1400$ , the amount of the standard tax (lei);

$x$  = variable depending on the rank of the locality;

$y$  = variable depending on the useful commercial area for carrying out the activity;

$z$  = seasonality coefficient;

$q = 0.9$  and represents adjustment coefficient for technical space.

**Table 1.**

**Seasonality coefficients and the locality rank variable for a restaurant**

Seasonality coefficient– z		
București, Brașov, Cluj-Napoca, Craiova, Iași, Constanța, Ploiești, Sibiu, Timișoara	0.45	
Towns, cities	0.35	
Tourist resorts of national interest	0.3	
Villages, communes and tourist resorts of local interest	0.1	
Variable according to the rank of the locality - x		
București	Zone A	17.0
	Zone B	16.0
	Zone C	15.0
	Zone D	13.5
8 poly (Brașov, Cluj-Napoca, Constanța, Craiova, Iași, Ploiești, Sibiu, Timișoara)	Zone A	15.0
	Zone B	14.0
	Zone C	13.0
Towns	Zone D	11.5
	Zone A	13.0
	Zone B	11.0
	Zone C	9.0
Cities	Zone D	7.0
		5.0
Resorts		5.0
Commune		3.0

**Table 2.**

**The variable usable area for a restaurant**

The area between	Variable depending on the useful area of the location ("y" variable)
0 – 30 sqm	2.0
31– 50 sqm	7.0
51– 70 sqm	12.0
71 mp – 90 sqm	16.0
91– 120 sqm	21.0
121– 160 sqm	29.0
161– 200 sqm	38.0
201 – 240 sqm	47.0
241– 300 sqm	58.0
301– 400 sqm	75.0
401– 500 sqm	80.0
501– 600 sqm	85.0
601– 700 sqm	90.0
701– 800 sqm	95.0
Over 801 sqm	105.0

**Determination of tax for bars and other activities serving drinks**

**Payers: restaurants, catering, other public food services**

**Calculation formula:**

$$I_{sa/unitate} = k \times (x + y \times q) \times z$$

where: k = 900, the amount of the standard tax (lei);

x = variable depending on the rank of the locality;

y = variable depending on the usable commercial/serving/business area;  
 z = seasonality coefficient;  
 q = 0,9 and represents the adjustment coefficient for space [7].

**Table 3.**

**Seasonality coefficients and the locality rank variable for a bar**

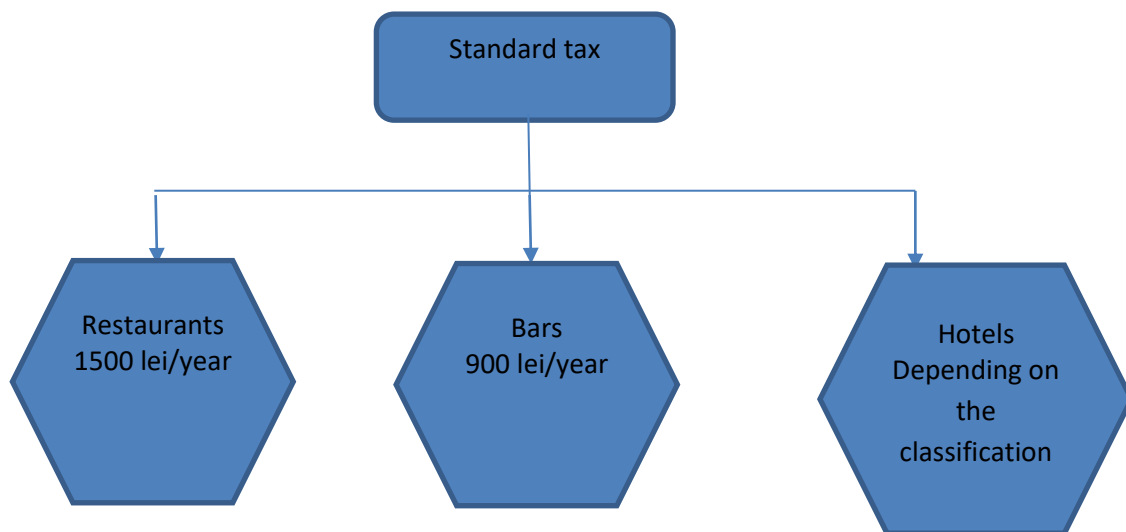
Seasonality coefficient- z		
București, Brașov, Cluj-Napoca, Craiova, Iași, Constanța, Ploiești, Sibiu, Timișoara	0.45	
Towns, cities	0.35	
Tourist resorts of national interest	0.30	
Villages, communes and tourist resorts of local interest	0.10	
The variable depending on the rank of the locality - x		
București	Zone A	16.0
	Zone B	15.0
	Zone C	14.0
	Zone D	12.5
8 poly (Brașov, Cluj-Napoca, Constanța, Craiova, Iași, Ploiești, Sibiu, Timișoara)	Zone A	14.0
	Zone B	13.0
	Zone C	12.0
	Zone D	11.0
Town	Zone A	12.5
	Zone B	10.0
	Zone C	8.0
	Zone D	4.0
City		2.0
Resorts		2.0
Commune		0.4

**Table 4.**

**The useful surface variable for a bar**

The area between	Variable depending on the useful area of the location ("y" variable)
0– 30 sqm	2.0
31– 50 sqm	4.0
51– 70 sqm	6.0
71– 90 sqm	8.0
91– 120 sqm	10.0
121– 160 sqm	14.0
161– 200 sqm	16.0
201– 240 sqm	18.0
241– 300 sqm	20.0
301– 400 sqm	25.0
401– 500 sqm	30.0
501– 600 sqm	40.0
601– 700 sqm	50.0
701– 800 sqm	60.0
801– 900 sqm	70.0
901 – 1000 sqm	80.0
Over 1001 sqm	90.0

The annual standard tax per unit is established by law, per type of unit, and is the basis for determining the specific tax owed by these units, according to a calculation formula:



**Figure 1. Standard tax**

The legislation applicable to this sector starting from 01.01.2023 abolishes the specific tax and gives the possibility to economic operators in the hospitality industry to submit either to the rules of the income tax of micro-enterprises or to the rules of the profit tax [5].

The microenterprise income tax is 1% for microenterprises that have one or more employees. However, economic operators in the hospitality industry do not have to meet the requirement regarding the number of employees, nor the requirement to have a turnover of less than 500,000 euros/year [9].

#### **Determining the tax on the income of micro-enterprises**

**Payers:** micro-enterprises, which meet the conditions stipulated by the Definition of micro-enterprises, from art. 47 para. (1) [11] from the fiscal code.

**Tax rate:** 1%

**Taxable base:** income from any source, except those provided by art. 53, para. (1) of the Fiscal Code [11].

**Calculation formula:**

$$I_v = V_T \times 1\%$$

**Deadline:** this tax is calculated and paid quarterly to the state budget, no later than the 25th of the month following each quarter.

#### **Determination of profit tax**

**Payers:** taxpayers provided for in art. 13, para. (1) [8] and para. (2) [9]fiscal code.

**Tax rate:** 16%

**Taxable base:** taxable profit



Figure 2. Determination of profit tax

Calculation formula:

$$I_{pr} = P_{ri} \times 16\%$$

Where:  $V_T$  = Total income;

$C_T$  = total expenses;

$C_n$  = non-deductible expenses;

$V_n$  = non-taxable income;

$P_{ri}$  = taxable profit

$I_{pr}$  = profit tax

Starting from this fiscal-accounting information, we notice that we are dealing with 2 different economic categories: profit and income. In the accounting sense, revenues are flows generated from the operating and financial activity of a company, and profit denotes a result that remains after deducting from revenues the costs incurred to obtain those revenues [2].

It follows that starting from 01.01.2023, economic operators in the hospitality industry will have to pay attention to the amount of income or profits, as these become the taxable bases for determining their tax burden.

In the specialized literature, the fiscal pressure is calculated as the ratio between the taxes and contributions due and the amount of GDP. Regarding our study, we will calculate and analyze the fiscal pressure borne by economic operators in the hospitality industry by referring to the company's turnover, a parameter that most faithfully expresses the volume of the company's activity, in gross form. Using this indicator, we will capture how much an enterprise allocates from its turnover to paying tax and we will do this by comparing specific, income and profit tax [4].

## RESEARCH RESULTS

Under the conditions of applying the specific tax, in the case of restaurants, it will have the following values, with an example for a restaurant with an area of 130 square meters:

**Table 5.**

**The specific tax for a restaurant**

Restaurant location	Specific tax for a restaurant
Commune/village	$1400 \times (3 + 29 \times 0.9) \times 0.1 = 4,074$ lei
Resorts	$1400 \times (5 + 29 \times 0.9) \times 0.3 = 13,062$ lei
Municipality area A	$1400 \times (13 + 29 \times 0.9) \times 0.35 = 19,159$ lei
Braşov area A	$1400 \times (15 + 29 \times 0.9) \times 0.45 = 28,893$ lei

In the case of a bar, cafe, with an area of 120 square meters, the annual specific tax due is calculated as follows:

**Table 6.**

**The specific tax for a bar**

Bar/cafe location	Specific tax for a bar / cafe
Commune/village	$900 \times (0.4 + 10 \times 0.9) \times 0.1 = 846$ lei
Resorts	$900 \times (2 + 10 \times 0.9) \times 0.3 = 2,970$ lei
Municipality area A	$900 \times (12.5 + 10 \times 0.9) \times 0.35 = 6,772$ lei
Braşov area A	$900 \times (14 + 10 \times 0.9) \times 0.45 = 9,315$ lei

Let's take as an example a restaurant in zone A which, starting from 01.01.2023, has to choose between the profit tax and the tax on the income of micro-enterprises.

Case: a restaurant presents the following accounting information for the first quarter of 2023; we will determine how much this restaurant would pay to the state budget if it chose the profit tax system or the income tax system:

**Table 7.**

**Example of tax calculation at a restaurant, after 01.01.2023**

RESTAURANT			
Accounting quantities	Abbreviations	Profit tax	Micro income tax
Total income	$V_T$	100,000	100,000
Total expenses	$C_T$	40,000	40,000
Taxable accounting profit	$P_{ri}$	60,000	60,000
Tax due	$I_d$	9,600	1,000 lei
Fiscal pressure	$Pr_f$	9.6%	1%

$$P_{ri} = V_T - C_T = 100\,000 - 40\,000 = 60\,000 \text{ lei}$$

$$I_{pr} = P_{ri} \times 16\% = 60\,000 \times 16\% = 9\,600 \text{ lei}$$

$$I_v = V_T \times 1\% = 100\,000 \times 1\% = 1\,000 \text{ lei}$$

$$I_d$$

$$Pr_f = \frac{I_d}{M_i} \times 100 = \frac{9600}{100000} = 9.6\%$$

$$M_i$$

In the case analyzed by us, we can draw the following:

**Table 8.**

**Comparison of taxes owed by a restaurant in 2022 and 2023**

Types of tax	Calculated tax due
Specific tax	19,159
Tax	9,600
Income tax	1,000





In this case, we considered a cost margin (fixed and variable) of the restaurant of about 40%. Compared to this average cost margin of a restaurant, we can say that, through the changes made to the fiscal legislation regarding the taxation of restaurants, there has been a fiscal relaxation, reducing the fiscal pressure felt by them in terms of the taxation of earnings. It can be observed that through the specific tax due, it took more into account parameters, such as the rank of the locality, the usable area, seasonality; aspects that from 2023 are removed and give restaurants the possibility to be taxed: profit or turnover [2].

## CONCLUSIONS

Based on the research of the documentary material composed primarily of the primary legislation in the field, we found that the taxation of units in the hospitality industry was based on other taxation criteria than income or wealth. Compared to other economic operators, whose earnings are taxed according to the amount of income and/or profits, the HoReCa sector was imposed, in order to determine the tax due, criteria such as: the seasonality of the business, the rank of the locality where it operates, the useful area of the location. GEO No. 16/2022 amending and supplementing the Fiscal Code eliminates this type of taxation of these companies and leaves them free to choose between:

- Income taxation with 1%, or
- Taxation of profits at 16%.

Regardless of the form of taxation that these economic operators choose to adopt, the legislator created the prerequisites for respecting the principles of fiscal equity, as they were formulated as maxims by Adam Smith, in the book *Wealth of Nations*; the absolute and relative tax burden of each taxpayer to be established according to his contributory power, which is dependent on the amount of income and taxable assets, as well as the personal situation of the taxable subject.

Observing not only the percentage rate that is different between the taxation of profits and incomes, but also through detailed analyses, we can state that the turnover tax tends to become more advantageous for the hospitality industry sector as well, in terms of the amount of tax owed, but also in terms of flexibility, ease and way of managing it. Of course, apart from the cases in which these types of economic operators obtain accounting and fiscal losses, in which case in the variant of taxation of profits, the fiscal pressure borne by them would become 0.

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