

Muşat & Asociații's lawyers obtain a new favourable solution in front of the High Court of Cassation and Justice that for the first time questions the practice of the tax authorities regarding the tax treatment applicable to sponsorship/ patronage/ private scholarships expenses



The team of lawyers specialised in tax litigation from Muşat & Asociații's tax law and litigation practices successfully represented before the High Court of Cassation and Justice one of the largest players in the meat production, processing and marketing industry in Romania.

In its recent decision, the High Court of Cassation and Justice dismissed the appeal lodged by DGAMC, therefore validating the decision of the court of first instance which, in a complex case related to the tax period 2015 - 2016, held that both the limitation of the deductibility of sponsorship and/or patronage expenses, as well as the exemption relating to reinvested profits refer to the same benchmark when determined in their amount, namely the 'corporate income tax due', without the tax legislation differentiating between these two methods of calculation.

Thus, the court of first instance held, and the Supreme Court confirmed, that the tax provisions do not reflect any priority in the application of the tax relief, which is why the court deem unlawful the tax authority's interpretation according to which the amount of the exemption relating to reinvested profits is first deducted from the corporate income tax and only then is the 20% percentage applied to determine the limit on the deductibility of sponsorship/patronage/private scholarships expenses.

Since the Fiscal Code and the methodological rules implementing the provisions of the Fiscal Code do not contain any express prohibition on the concurrent application of the two tax reliefs, the court held that there is no legal impediment for a taxpayer being granted the right to determine amounts deductible from corporate income tax by reference to the same basis of assessment, i.e. the same value.

Moreover, the court also noted the applicability of the principle of interpretation in dubio contra fiscum in tax law, according to which uncertain legal provisions are interpreted against the tax authorities and benefit the taxpayer. In the present case, the court held that the tax authority did not clearly and textually show why the interpretation it adopted in relation to the limitation of the deductibility of sponsorship/patronage/private scholarship expenses would be the correct one.

The team of lawyers and tax consultants of Muşat & Asociații involved in this project consisted of [Angela Porumb](#) and [Razvan Graure](#) – *Partners*, [Alina Man](#) and [Pompilia Grigoraş](#) – *Managing Associates*.