

CAPITAL DEPRECIATION

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field:

- Law no.15/1994, regarding the depreciation of the capital fixed in tangible and intangible assets, republished in the Official Gazette no. 242/31st of May 1999
- G.O. no. 909/1997 for the approval of the Methodological Regulation of enforcing the Law no. 15/1994 regarding the depreciation of the capital fixed in tangible and intangible assets, published in Official Gazette no. 04/ 8th of January 1998
- Decision no. 424/2001 regarding the settling of the income value of fixtures, published in the Official Gazette no. 228/4th of May 2001

I. Scope of the legal provisions for the depreciation of the capital fixed in tangible and intangible assets

The depreciation of the fixed capital may be performed by:

- a) Companies performing economic activities and that invest capital in tangible and intangible assets, depreciable by use or in time, for the purpose of re-storing of the initial capital.
- b) Non-profit legal persons, allowed according to law, to perform economic activities; these shall depreciate the fixed capital only for the activities performed for the purpose of making profit, and for which, according to law they have to pay profit tax.
- c) Natural persons and the associations with no legal personality that perform activities for the purpose of making incomes, and that are due, according to law, to keep a simple entry accounting system.
- d) The branches and other offices located in Romania, belonging to certain legal persons headquartered abroad.

II. Depreciable fixed assets

The depreciable fixed capital materializes in the goods and the valuables supposed to be used for an activity for a period longer than one year and that depreciate gradually. The depreciable fixed capital is composed of 2 groups:

1. Tangible assets
2. Intangible assets

1. Tangible assets

According to Law no. 15/ 1994 republished, the tangible assets afferent to the fixed capital are:

- fields, including the investments for equipping them;
- fixtures;

There are to be considered fixtures the object or group of objects that are used as such and that fulfill following conditions cumulatively:

- has an income value greater than the limit settled by Government Decision, that can be annually updated depending on the inflation index communicated by the National Statistics Commission.
- has regular use duration longer than one year.

The non-depreciable tangible assets are:

- fixtures belonging to the public property included in this category on the basis of the legal provisions;
- lakes, pools, the ponds that are not the result of investments;
- fields, including the afforested ones;
- fixtures administrated by public institutions.

2. Intangible assets

According to law this category consists of:

- constitution expenses;
- development and research expenses;
- expenses for discovering useful mineral resources, that are not materialized in fixtures as exploited resources;

- concessions, the intangible assets such as the superficies, usufruct, patents and other assimilated rights and values;
- other intangible assets, including computer software created by the economic entities or acquired from third parties.

III. Computation of the depreciation

The depreciation of the fixtures is computed by applying the depreciation quotas to the income value of the fixtures and is included in the exploitation expenses.

The depreciation of fixtures is computed starting with the following month of beginning its functioning, until the full recovery of the income value, according to the usual functioning durations. The date of beginning the functioning of the fixtures is regulated by the Government Decision no. 909/1997, for approval of the Methodological Regulation of enforcing the Law no. 15/1994.

Specifications:

- a) The depreciation of the fixtures that are subject to concession, rented or leased is in the burden of their owner.
- b) The depreciation of the fixtures commissioned to joint ventures shall be computed by the associate that has them in its patrimony and shall be communicated to the associate that accounts the operations of the association, in order to be registered as expenses.
- c) The depreciation of the expenses for the investments and the modernization of the fixtures subject to concession rented or leased is in the charge of the economic entity, of the natural person or of the association with no legal personality, that performs activity with the purpose of realizing incomes, that has done the investment.

1. Exempt from the computation of the depreciation

The companies, natural persons or the associations with no legal personality, that perform activities with the purpose of making incomes, the branches or other offices located in Romania of some foreign legal persons are exempted from the computation of the depreciation, in justified

situations, with the approval of the general department of public finances and financial state control, for the following tangible assets:

- The mines that are in preservation or are no longer in use, as well as the gassers, the oil wells that are not in production, at the proposal of the National Agency for Mineral Resources; for the mines that are in preservation the exemption is for the preservation period, and for the mines that are no longer in use for the remaining period from their removal out of function.
- The fixtures from the economic entities' patrimony preserved for a period longer than 30 days; the exemption shall be for the preservation period.

The expenses for the preservation of the fixtures are exploitation expenses, fiscally deductible.

- The works for land improvements and waters management, with a general character of service, allotted for the protection against floods and the removal of the excess of humidity.

In the case of the natural persons and associations with no legal personality that perform activities with the purpose of obtaining incomes, the depreciation afferent to the period of exemption for tangible assets provided for at the first two points shall be registered as deductible expense on the date of the expiration of the normal duration of use provided by law and of the actual annulment.

2. Depreciation of intangible assets

a) Expenses of establishment and those of research and development are depreciated in a period of five years at the most.

b) Patents, licenses, know-how, trademarks, and other similar industrial and trade rights, subscribed as contribution, otherwise purchased, are depreciated on the durations stipulated for their use by the economic entity that holds them.

c) Other intangible fixtures, as: concessions, usufruct are depreciated on the duration of the contract.

d) Software programs created by the economic entity or purchased from third parties are depreciated depending on the probable use period, which cannot exceed a period of five years.

IV. Taking out of function of fixtures

The taking out of function of fixtures with an entirely depreciated income value or with an income value remained non-recovered, is made with the approval of the board of directors of the economic entity, respectively of the person in charge for the management of the patrimony in the case of the non-profit legal persons.

After the approval of the taking out of function of the fixtures, their capitalization shall be initiated. The procedure of capitalization through selling or annulment shall be approved by the board of directors or by the person in charge for the management of the patrimony.

V. Non-depreciated value

The non-depreciated value means the difference between the income value of the fixtures and the value of depreciation, recovered through the comprising in the exploitation expenses, from which the amounts resulted from the capitalization are deducted.

The duration and the method of recovery of the non-depreciated value are established by the board of directors of the economic entity, respectively by the person in charge with the management of the patrimony, in the case of the non-profit legal persons.

Thus, if through the depreciation the income value of fixtures taken out of function shall not be entirely recovered, the economic entities ensure the covering of the non-depreciated value from the amount resulted from their capitalization. The difference remained uncovered is included in exceptional expenses, fiscally non-deductible, for a period of maximum 5 years, or through the reduction of their own capitals, with the compliance with the legal provisions.

In the situation of natural persons and associations without legal personality, performing activities for the making of profits, the value remained non-depreciated of the fixtures taken out of function, determined through the deduction from the income value of the depreciation included on costs in the course of exploitation, is deductible in the limit of the incomes made by capitalization.

VI. Depreciation regimes

With a view to fixtures depreciation, the economic entities shall use one of the following depreciation regimes:

a. Straight line depreciation

This is made through the uniform including in the exploitation expenses of certain fix amounts, established pro rata with the number of years of the normal period of use of the fixture. Straight line depreciation is computed by applying annual depreciation quota to the income value of the fixtures. The computation of the depreciation in a straight line system is approved by the board of directors of the economic entity, respectively by the person in charge with the management of the patrimony on the date of the putting into service.

For constructions, the depreciation shall be always computed in a straight line system.

b. Degressive depreciation

This is made by multiplication of the linear depreciation quotas with one of the following coefficients:

- i) 1.5 – if the normal period of use of the depreciated fixture is between 2 and 5 years;
- ii) 2.0 - if the normal period of use of the depreciated fixture is between 5 and 10 years;
- iii) 2.5 - if the normal period of use of the depreciated fixture is longer than 10 years.

The use of such computation method is approved by the board of directors of the economic entity, respectively by the person in charge with the management of the patrimony, on the date of the putting into service.

c. Accelerated depreciation

This one consists of including in the first year of service, in the exploitation expenses of a depreciation of up to 50% from the income value of the respective fixture.

The value remained for depreciation, after the first year of service, is recovered according to the linear regime, by reference to the number of years remained for use.

The use of the accelerated depreciation regime is approved by the general department of public finances, upon written proposal of the board of

directors of the economic entity or of the person in charge with the management of the patrimony, in the case of the non-profit legal persons, on the basis of a substantiating documentation.

VII. Sanctioning regime

Violation of the obligations regarding the computation and registration of the capital fixed in tangible or intangible assets is sanctioned according to the provisions of Law no. 15/1994 on depreciation of capital fixed in tangible and intangible assets.

According to law, the following acts are considered contraventions to the norms regarding computation and registration of depreciation of capital fixed in tangible or intangible assets, if they were not performed in such conditions as to be considered offences according to criminal law:

- a) registration as fixtures of certain objects which, according to Law no. 15/1994 republished do not fall within this category;
- b) computation and registration in accountancy of the depreciation of exempted fixtures;
- c) applying certain normal use periods for fixtures, others than those established according to law;
- d) registration of certain income values of fixtures others than those established according to law;
- e) modification during the period of functioning of the fixture, of the period and of the depreciation regime.

Contraventions stipulated under the letters a), b) and e) are sanctioned with a fine from lei 5 million to lei 15 million and those stipulated under the letter c) and d) are sanctioned with a fine from lei 3 million to lei 10 million. The establishment of contraventions and enforcement of sanctions are made by the specialized bodies of the Ministry of Finances.