

SECTION II FINANCIAL AND ACCOUNTING POLICIES

THE FISCAL IMPLICATIONS REGARDING THE GRANTING OF GIFT VOUCHERS WITHIN THE MARKETING ACTIONS

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Abstract

The present paper aims through a study, to highlight the type of method of evading taxes and duties to the consolidated state budget, by granting gift vouchers, as part of a marketing and product promotion campaign, to individuals who they did not have the quality of employees of the company.

The purpose of this research is to identify and study the reasons for granting gift vouchers, in marketing actions and the consequences of incorrect interpretation / application of legislation.

Through the research carried out, it was found that the phenomenon of granting gift vouchers currently has a significant impact on the Romanian economic and social reality.

In order to reduce the phenomenon of circumvention, a monitoring, surveillance and control mechanism should be more firmly established, as well as the amendment of legislation, which is a consequence of inaccuracies or imperfections of laws. Non-taxation by withholding and transferring contributions to the consolidated state budget is a violation of legislation and a decrease in the consolidated state budget.

Following the study, it resulted that the granting of gift vouchers is in fact an additional remuneration granted to employees of distributors strictly for carrying out the activities for which they are employed by them, being a disguised form of payment of salary rights.

Keywords: gift vouchers, marketing, salary contributions, income tax, budget

JEL Classification: M31, M41, M51

1. Introduction

Understanding and deciphering future trends is extremely important for decision making in any activity, including marketing.

In order to keep up with the changes in society that have occurred, especially in the digital age, companies must define their own marketing concept adapted to the requirements, goals and objectives of each one.

Marketing has evolved as a function of the enterprise, but also as a science with the economic development of the last 50 years.

However, business people, researchers and marketers look at the definition and content of the marketing concept from different points of view.

In Romania, the trend of transition to a mature market, aware of the marketing methods used by companies for sales is growing.

Regarding the strategy of economic agents, it is an important link in increasing the flow of consumption and purchase, by giving gift vouchers to the final consumer.

In the present paper, a study is presented at the CLUB SRL Company, regarding the granting of gift vouchers within a marketing and product promotion campaign, to individuals who did not have the quality of employees of the company.

The study showed that the granting of gift vouchers is in fact an additional remuneration granted to employees of distributors strictly for carrying out the activities for which they are employed by them, being a disguised form of payment of employee rights.

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Non-taxation by withholding and transferring contributions to the consolidated state budget is a violation of legislation and a decrease in the consolidated state budget.

2. Literature review

Kotler Ph. delimited sales marketing and explained with the help of additional concepts that: the marketing process begins long before the actual sale. Thus, the marketing activity has as starting points the needs, desires and demand of consumers. These are satisfied by goods and services and evaluated according to the expected value and satisfaction and those obtained (Kotler Ph., 2003).

Roșca, Al., Suggests that: buyers preferences represent a positive motivation, expressed by emotional compatibility with a product, service, a brand, marketing company, person, etc. It is not an internal function of the organism, but is the result of human contact with a qualitative element of objects through which needs are met, a trait acquired in the connection between man and goods that meet his needs (Roșca, 2012).

Munteanu V., Zuca M., states that accounting engineering is defined by some authors as representing: the process by which, given the existence of gaps in rules, accounting figures are manipulated and, taking advantage of flexibility, choose those measurement and information practices which allow the transformation of summary documents from what they should be into what managers want ”or“ the process by which transactions are structured in such a way as to allow the “production” of the desired accounting result (Munteanu, Zuca, 2011).

Todor et. all., states in the paper - The degree of compliance based on excise duties in Romania between 2002 and 2015, that: the mechanisms of the competitive market and the tendency of modern states to intervene in the tax economy, we can easily see the significant role of taxes, either that we refer to the direct or indirect ones, being used as a lever of economic policy, through which we can accentuate or slow down certain areas of activity and increase or decrease consumption in a certain category of goods or services (Todor, et. all., 2017).

3. Materials and methods

The consumer's behavior towards the product is about the buyer's contact with the product in the commercial network (stores).

This involves the consumer carrying out the following activities:

- locating the product in the store;
- examination of the product;
- the actual purchase by paying at home its equivalent value.

At the same time, the other ways in which a consumer comes into contact with a product should be mentioned: receiving samples at home or in the store, or receiving a gift. Contact may also be indirect by observing the use of the product by third parties.

The second aspect of the consumer's behavior towards the product is represented by the brand loyalty.

Currently, under the influence of factors such as the variety of product categories, the availability of information about offers, similarities between products, time pressure on the consumer, brand loyalty has decreased.

Depending on the involvement of the consumer and the number of brands purchased in a certain period of time, there are 4 types of buying behaviors:

- brand loyalty;
- searching for variety;
- repeat purchase;
- varied derived behavior.

A consumer is loyal to a brand if he buys it repeatedly and is convinced of the value of that brand.

Brand loyalty is the intrinsic commitment of the consumer to buy a particular brand repeatedly. Fidelity differs from the repetition of the purchase in that the latter means only a behavioral manifestation without a strong motivation from the consumer.

The search for variety refers to the consumer's desire to buy different brands out of curiosity, while the varied derivative behavior occurs under the influence of external factors, such as stock depletion or better price at another brand.

Starting from this model, consumers can be in the following situations:

- loyal consumers of a brand;
- loyal consumers with the occasional change of brand;
- consumers who change loyalty from one brand to another;
- consumers looking for variety in the entire offer available at a given time.

Thus, multi-brand strategies are more aimed at consumers looking for variety.

The brand expansion strategy is aimed at loyal consumers looking for variety within a limited set of brands.

The characteristics of the goods with a suggestive effect on the customers are: the price, the packaging, the name and the image of the brand.

The packaging traditionally fulfills four functions:

- protection of the product during distribution;
- economic;
- ensuring optimal storage and use of the product;
- promotion, communication of product information.

In many cases, packaging can highlight a product, creating a relative advantage.

The consumer is influenced by the size and color of the packaging. The size of the package influences the choice of the desired goods and quantity. In general, consumers prefer large packaging to save time and money.

The color of the packaging is important to attract the consumer's attention but also to convey certain meanings.

Also, the change of the color of the packaging determines the change of the consumer's perception. At the same time, the packaging must allow the brand to be identified, which simplifies the purchase and makes it possible for consumers to gain loyalty, as well as the very useful information label, especially in the case of food.

The quality of the marketing strategy even if it is not a strict characteristic of a product has an important influence in ensuring its efficiency.

At the brand level, its image or symbolism is often the only relative advantage that an enterprise can offer.

Regarding the brand image, a high price means a high quality of the product, the consumers always establishing a relationship between price and quality.

The price is also used for the positioning of a brand on the market. In order to obtain a relative advantage, different distribution tactics can be used, such as the existence of a large number of product outlets and the corresponding display of products at the point of sale.

At the same time, marketing costs are divided into production, promotion, distribution and market research costs.

These costs are associated with the level of profit established by the company, thus resulting in the significance of the price in terms of marketing.

The price must cover at least variable costs and ensure a profit margin for the product to be effective.

The legislation applicable to gift vouchers is defined by Law no. 193/2006 - regarding the granting of gift vouchers and nursery vouchers and Law no. 165/2018 - regarding the granting of securities.

The legal framework for granting gift vouchers and nursery vouchers is provided by Law no. 193/2006:

[...] Art. 2 - Law no. 193/2006 - on the granting of gift vouchers and nursery vouchers
(1) Gift vouchers can be used for marketing campaigns, market research, promotion on existing or new markets, for protocol, for advertising and publicity expenses, as well as for social expenses.

H.G. no. 1317/2006 for the approval of the Methodological Norms for the application of the provisions of law no. 193/2006 on the granting of gift vouchers and nursery vouchers: The activities and destinations provided in art. 2 para. (11) of Law no. 193/2006, with the subsequent modifications, they are generating expenses that fall within the provisions of Law no. 571/2003 on the Fiscal Code, with subsequent amendments and completions.

Companies may use gift vouchers for marketing campaigns, market research, promotion on existing or new markets, for protocol, for advertising and publicity expenses, up to the amounts intended to cover the face value of these vouchers, provided in their own budgets, approved by law, in separate items of expenditure, called gift vouchers. In this case, the fiscal regime applicable to the nominal value of the gift vouchers granted by the employers is the one established by the provisions of Law no. 571/2003, with the subsequent modifications and completions, for the expenses made by the taxpayers.

Individual employees who carry out an activity in an employment relationship, based on an employment relationship regulated by Law no. 53/2003 - regarding the Labor Code, with the subsequent amendments and completions, or by a special law, can benefit from gift vouchers granted by their employers, only for the destinations or events that fall within the social expenses. Employers give their employees gift vouchers, up to the amount provided in the expenditure budget approved according to the law, in a separate expenditure item called Gift vouchers for social expenses [...].

Law no. 165/2018 - regarding the granting of securities:

[...] Article 2 para. (1) For the purposes of this law, the vouchers that may be awarded are: meal vouchers, gift vouchers, nursery vouchers, cultural vouchers and holiday vouchers.

(2) For the purposes of this law, unless expressly provided otherwise, the use of the terms voucher, meal voucher, gift voucher, nursery voucher, cultural voucher, respectively holiday voucher, shall be construed as reference to both paper and electronic securities.

4. Discussions

CLUB SRL acquires gift vouchers that it grants both to its own employees (for the occasions and within the limits provided by the Fiscal Code), and to legal collaborators, for the benefit of their employees (individuals), for marketing actions, market research, development on current or new markets.

The costs with gift vouchers hired by CLUB SRL have the role of boosting sales of products sold through distributors.

CLUB SRL organizes a promotional campaign, by issuing a Regulation, which establishes/ provides the following:

- area of development: the territory of Romania;
- development period: March - May;
- participants;
- any legal entity that sells the products distributed by CLUB SRL;
- the products participating in the campaign can be any of the products sold by the Organizer;
- giving gift vouchers.

CLUB SRL concludes contracts with distributors so that the sales incentive bonus is granted to the distributor (legal entity) taking into account the sales objective and its detailing for each employee of the collaborator.

The monthly sales objective of the distributor is therefore divided at the level of its employees, the contractual agreement is concluded between CLUB SRL and the distributor (without involvement/negotiation/participation of individuals), and gift vouchers are given to individuals employed by the distributor based on a Minutes which details each employee of the distributor and the number and value of gift vouchers due to each employee of the distributor.

Because the vouchers are awarded as a result of the relationship between the companies, not for the personal merits of the employees, the vouchers must first be received by the partner company and then distributed to the employees.

Considering the provisions of point 12 para. (2) of Title III of the Methodological Norms for the application of the Fiscal Code: the advantages in cash and in kind provided in art. 76 para. (3) of the Fiscal Code are considered to be any benefits received by the employee from third parties or as a result of the provisions of the individual employment contract or a contractual relationship between the parties, as the case may be (Law no. 227, 2015).

The company CLUB SRL must declare the value of the gift vouchers in the form 112 type insured 11- natural persons, who receive advantages in cash or in kind from third parties, [...].

Regarding the establishment of the dependence of the activity carried out by the employees of the partners, the provisions of art. 7 point 3 are taken into account. of Law no. 227/2015 on the Fiscal Code, which defines the independent activity as the activity that meets at least 4 criteria from the following 7 criteria:

☐ the natural person has the freedom to choose the place and the way of carrying out the activity, as well as the work schedule;

According to point 1 para. (2) The methodological norms for the application of art. 7:

☐ point 3.1. provides: The criterion regarding the person's freedom to choose the place, the way of carrying out the activity as well as the work schedule is fulfilled when its three components are fulfilled cumulatively. In the legal report, the parties may agree on the date, place and work schedule depending on the specifics of the activity and the other activities they carry out.

In this case, the four conditions are not cumulatively fulfilled because the natural person does not have the freedom to choose the way of carrying out the activity taking into account the obligations from the contract, the criterion not being fulfilled by the natural person.

☐ point 3.2. provides: the natural person has the freedom to carry out the activity for several clients, but according to the methodological norms the natural person has the freedom to carry out the activity even with a single client if there is an exclusivity clause in carrying out the activity.

The natural persons in question carry out the activity, as employees, which does not exclude the possibility of carrying out an independent activity outside these contracts, a criterion fulfilled by the natural person.

☐ point 3.3. provides: risks inherent to the activity are assumed by the natural person carrying out the activity.

Compared to this criterion, we can say that the natural person is not in a position to assume risks of a professional and economic nature, motivated precisely by the fact that the person acting independently also assumes risks of a legal nature towards business partners/clients, these are the responsibility of the legal entity that sells the products of CLUB SRL.

As it can be ascertained, the legislator uses the phrase business patrimony which is defined by point 8 of the Methodological Norms for the application of art. 68 of Law no. 227/2015 as being constituted by all the rights and obligations related to the development of the activity that is registered in the Register - inventory.

So it is presumed that these individuals should carry out their activity under the conditions of the O.U.G. no. 44/2008 updated, regarding the development of the activity of

the authorized natural persons, individual enterprises and family enterprises, in order to be able to discuss the use of the business patrimony. In this situation we can see the following:

- individuals have the quality of employee at the company that sells the products of CLUB SRL;

- the activity carried out on the basis of employment contracts is carried out in the spaces that sold CLUB SRL brand products, and from the obligations registered in the contract it does not result that they would use some of the personal patrimony in carrying out the activity;

- do not buy or sell products, the products are the property of distributors.

In conclusion, these persons in the realization of the object of the employment contract do not use the business patrimony in the sense defined by the Fiscal Code, as a result of which this criterion is not fulfilled.

- ☐ point 3.5. provides: the activity is performed by using the intellectual capacity and/or its physical performance, depending on the specifics of the activity, a criterion met by individuals;

- ☐ point 3.6. provides: the natural person is part of a professional body with the role of representation and supervision of the profession, according to the special normative acts that regulate the organization and exercise of the respective profession.

From the verifications performed in the REVISAL database on a significant number of individuals who obtained such incomes, it was found that they had only the status of employee or did not appear with other incomes declared from independent activity.

As a consequence, this criterion is not met, the natural persons not being part of a professional body according to the special normative acts that regulate the organization and exercise of the profession.

- ☐ point 3.7. provides: the natural person has the freedom to carry out the activity directly, with employed staff or through collaboration with third parties in accordance with the law;

In support we also bring the following arguments:

[...] Art. 67 of Law 227/2015 - The definition of income from independent activities provides in par. (1): Income from independent activities includes income from production, trade, services, income from the liberal professions and income from intellectual property rights, realized individually and / or in a form of association, including from activities adjacent. (3) The activities that generate income from independent activities included in art. 67 para. (1) of the Fiscal Code are for example:

Production activities; purchasing activities performed for the purpose of resale; organization of shows and the like;

[...] Art. 68 of Law 227/2015 - General rules for establishing the annual net income from independent activities, determined in real system, based on accounting data, para. (1) The annual net income from independent activities is determined in the real system based on the accounting data, as the difference between the gross income and the deductible expenses made in order to achieve income.

As can be seen: point 6 para. (3) of the Application Norms of art. 67 of Law 227/2015 on the Fiscal Code, defines the independent activity as the activity carried out by a natural person in order to obtain income that meets at least 4 criteria out of 7 provided in art. 7 point 3 of the Fiscal Code.

Following those presented above, we can conclude that when establishing the independence criteria, it was taken into account that: the respective natural persons to carry out a specific activity of the nature of those exemplified in para. (3) and at the same time to present a form of fiscal registration since at art. 68 stipulate that the annual net income from independent activities is calculated according to the accounting data.

5. Conclusions

Following the presented study, the following can be deduced:

- natural persons who have received gift vouchers, are not part of a professional body regulated by special laws and do not carry out activity in a form of authorization regulated by O.U.G. no. 44/2008 updated regarding the development of the activity of the authorized natural persons, individual enterprises and family enterprises, situation in which the obtaining of incomes from independent activity related to the provisions of art. 67 and art.68 of the Fiscal Code was not possible.

As a result of those presented above, the work developed by these people cannot be an independent label in the conditions in which at least 4 of the 7 stated criteria are not met, and from those presented we found that at most 3 criteria are met (provided in pt. 3.2, 3.5 and 3.7 of Article 7 of the Fiscal Code);

- tax payment obligations had to be calculated and withheld at the level of the Company (income tax and salary contributions) for gift vouchers granted for the benefit of individuals who are not employees of the Company;

- non-taxation by withholding and transferring contributions to the consolidated state budget is a violation of legislation and a decrease in the consolidated state budget.

- Following the study, it resulted that the granting of gift vouchers is in fact an additional remuneration granted to the employees of the distributors strictly for carrying out the activities for which they are employed, being a disguised form of payment of salary rights;

- tax consequences: payment of income tax, contributions of a salary nature, interest and penalties.

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