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Review Article

Theoretical and Practical Implications of the Principle of Economic Prevalence about Legal

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Abstract *- In this article, I have done descriptive and qualitative research on the principle of economic prevalence over the legal one in order to identify the differences between the two principles with different implications in practice. Both principles improve the quality of the information in financial statements. In normal situations, the legal form must be in accordance with the economic reality. But there are rare situations when there is no agreement between the legal form and the economic reality. One such example is financial leasing. And in this case, the entity will record in operations the transactions respecting their economic fund.*

Keywords *- accounting regulations, leasing, commercial reduction, profit tax.*

JEL codes: M40, M41

I. INTRODUCTION

Financial accounting emphasizes the economic substance of events, although the legal form may differ from this and may suggest a different treatment. Usually, the economic substance of the events to be accounted for coincides with the legal form. Accountants emphasize the economic background of the events so that the information transmitted reflects the economic reality better (AICPA, p. 9081).

The first to put the issue of economic priority over the form was the American accounting professionals in an attempt to reflect the leasing operations. Between 1949 and 1973, several draft norms were proposed in the USA, and in 1976 the American accounting standardization body FASB issued the accounting norm FAS 13 "Leasing," which required that the fixed assets that are the object of the financial leasing contract should be included in the tenant's balance sheet. As tangible fixed assets in counterparty with long-term debt of equal size. This model has been adopted not only in Anglo-Saxon countries but also in Belgium, the Netherlands, and Portugal. It is also taken over by the IASB under IAS 17 “Leasing”, revised in 1997.

The US GAAP standard, in effect from 1980 to 2010, presents faithful representation as a component of the reliability of financial information. The priority of the substance over the form is not expressed as such because it would be insignificant, and fidelity would not support the representation in accounting if there was a form without a fund. The IFRS conceptual framework, in force between 1989 and 2010, integrated the principle of economic prevalence over the legal one in order to also achieve the objective of reliability of financial statements.

In September 2010, the IASB and the FASB decided to unite the two, forming a unique conceptual framework. FASB wanted to replace it while IASB only partially revised it. The two standardization bodies maintained as essential qualitative characteristics of financial information the relevance and accurate representation (OdileBarbe and Laurent Didelot, 2012).

On 25 October 2011, the European Commission published a proposal to replace Directives 4 and 7 with Directive 10. This review aimed at reducing and simplifying the reporting of small entities, improving the clarity and comparability of financial statements, and protecting the basic needs of users. The new directive includes a number of twelve amendments, among which the accounting principles, one of them is the prevalence of the economic over the legal. The direct consequence of applying this principle is the correct presentation in accounting. In France, it is not applied at the level of individual financial accounts but only at the level of consolidated accounts. The meaning that the French perceived on the Anglo-Saxon principle, the primordiality of the economic reality over the legal appearance or the priority of the substance over the form may lead to some erroneous conclusions because these expressions presuppose the subordination to reality, a situation that would not take into account of the legislative field. The French formula emphasizes priority, while the Anglo-Saxon model sets out the idea of joining over the idea of substitution. (NiculaeFeleagă, Ion Ionaşcu, 1998).

In accounting practice and jurisprudence, several situations were encountered when applying the principle of economic prevalence over the legal one, thus: the classification, by the users, of the leasing contracts in operational or financial leasing; framing the operations for sale in their own name or commission, respectively consignment; revenue recognition respectively of the expenses in the profit and loss account or as income in advance, respective expenses in advance; the classification of the participations as being held in the long term or in the short term; the recognition of the investments held as being of the nature of the shares held in affiliated entities, the interests of participation or in the form of other financial assets; framing the reductions granted, respectively primates, to commercial or financial discounts.

II. THE CLASSIFICATION, BY THE USERS, OF THE LEASING CONTRACTS IN OPERATIONAL OR FINANCIAL LEASING

The most common situation in which the principle of economic prevalence over the legal one is applied is the financial lease. From a legal point of view, the lessor, although he remains the owner of the goods that are the object of the contract, no longer presents the goods in his balance sheet, and the lessee does not become the owner of these goods, but nevertheless presents them in his balance sheet along with the goods for which, legally, he is the owner.

According to SIC 27, an entity may enter into a transaction or a series of structured transactions with one or more unrelated parties involving the legal form of a lease (for example, an entity may enter into a regime to lease an asset to an investor and to rent the same asset back, or alternatively, to sell it legally and then to take it back by leasing). The form of each arrangement by its terms and conditions can vary significantly. With regard to renting and leasing, an example may be that the arrangement is made to obtain a tax advantage for the investor, shared with the entity in the form of a tax, and not to convey the right to use the asset. When an agreement with an investor involves the legal form of a lease, questions arise as to how to determine whether a series of transactions are linked and should be accounted for as a transaction and whether the arrangement meets the definition of a lease in accordance with IAS 17.

According to IFRIC 4, determining whether a contract is or contains a lease is based on its fund and requires an assessment of whether its execution depends on the use of an asset or certain assets and whether the right to use the asset is conferred. Although a specific asset may be explicitly identified in an agreement, it is not the subject of a lease unless the execution of the agreement depends on the use of the specified asset.

An entity may enter into an agreement containing a transaction or a series of related transactions which does not take the legal form of a lease but grants the right to use an asset in exchange for a payment or series of payments. Examples include agreements in which an entity may convey such a right to use an asset to another entity, often in conjunction with ancillary services. The assessment of whether a contract contains leasing is still in the beginning based on all the facts and circumstances. If a contract contains a lease, it will be classified as financial or operational, in accordance with IAS 17. The payments and other considerations required by the contract must be separated at the beginning of the agreement or at a revaluation of the agreement in the lease and lease agreements. Used for other items, based on fair value. Minimum lease payments include rental payments only and exclude payments for other elements of the agreement. In some cases, separating lease payments from those made for other elements of the contract will require the buyer to use an estimation technique if the lessee reaches the conclusion that the payments cannot be reliably separated, in the financial leasing contract, an asset and a debt is recognized at a value equal to that of the underlying asset that is the object of the leasing contract.

Consequently, the debt is reduced as the payments are made, and the financial expenses related to the recognized interest are allocated using the marginal rate of the lessee. In the case of an operational leasing agreement, all payments are treated as leasing payments in accordance with the requirements of IAS 17, which must be separated from the minimum leasing payments of other agreements that do not include payments for non-leasing items specifying this fact.

In accordance with SIC 15, in the negotiation of a lease or the renewal of one, the lessor may offer incentives for the lessee. Alternatively, when negotiating the lease, the parties may agree to a free period or a reduced rent. The problem is given by the way in which the incentives in an operating lease should be recognized in the financial statements of both the lessee and the lessor.

All the incentives provided in the lease are recognized as an integrated part of the agreed consideration for the use of those leased assets, regardless of the nature of the incentives, the form, or the repayment schedule.

The lessor must recognize the total cost of the incentives as a reduction of the rents, and the income for the duration of the lease must be distributed on a linear basis unless another systematic basis more representative is established for the period of time when the value is diminished the rented good.

The lessee must recognize the benefit of the incentives as a reduction of the expenses with the rent during the lease, on a linear basis, unless another systematic basis is more representative for the time period of the rented asset. The costs incurred by the tenant are accounted for in accordance with the standards applicable to these costs, including those which are effectively reimbursed through an incentive arrangement. This treatment is also included in OMFP 1802/2014.

In OMFP 1802/2014, the concept of the prevalence of the economic over the legal is found in the form of the principle of accounting and presentation of the items in the balance sheet and in the profit and loss account, taking into account the economic background of the transaction or the commitment in question. The observance of this principle aims to record in the accounting and the faithful presentation of the economic-financial operations, according to the economic reality, highlighting the rights and obligations, as well as the risks associated with these operations.

At the global level, the accounting of the goods that are the subject of a financial leasing contract is performed differently from one country to another, so in the USA, the United Kingdom, Ireland, Sweden, Poland, the goods are taken over in the tenant's balance sheet as tangible assets, by virtue of applying the principle. Prioritizing the economic reality over the legal appearance.

In France, Italy, Hungary, Germany, Czech Republic, Switzerland, Finland, the goods remain in the balance sheet (heritage) of the lessor, by virtue of not applying the mentioned principle, following the same accounting treatment as in the case of regular rent. In some countries, you can opt for one of the two concepts presented, such as Denmark. The chosen method must be submitted for information in the explanatory notes.

There are countries where there is a mix between the two concepts, for example, Spain. Thus, in this country, since the implementation of the General Accounting Plan in 1990, the economic concept is pursued in which the tenant retains the legal ownership right over the rented property if there are no doubts regarding the exercise of the purchase option at the end of the lease period. The good given under the financial leasing regime remains as an asset in the lessor's balance sheet. The lessee (the tenant) must record the tasks and responsibilities related to the rented property as an intangible asset in his balance sheet.

III.THE CLASSIFICATION OF THE OPERATION FOR SALE IN THEIR OWN NAME OR COMMISSION, RESPECTIVELY CONSIGNMENT

According to the legislation in force, a consignment contract is a variety of the commission contract that aims to sell movable goods that the consignee has handed over to the consignee for this purpose. Thus, the consignment contract has the following particularities: it is concluded in written form and is governed by the rules of the Civil Code, the special law, as well as by the provisions regarding the contract and commission contract; the price at which the good is to be sold is established by the parties to the consignment contract, or in the absence, the current price of the goods on the relevant market, from the moment of sale; the consignee can unilaterally change the sale price established, and the consignee will be held by this modification from the moment they were notified in writing; usually the sale will be made only by cash payment by bank transfer or check and only at the current prices of the goods. However, other provisions relating to the payment or express written instructions of the consignee to be taken into account may be provided by contract. In accounting, the revenues from sales of goods are recorded at the time of delivery of the goods to the buyers, of their delivery based on the invoice or under other conditions provided in the contract, which attests to the transfer of ownership of the respective goods to the clients. The proceeds from the sale of the goods are recognized when the following conditions are met: the entity transferred to the buyer the significant risks and advantages arising from the ownership over the goods; the entity no longer manages the goods sold at the level at which they would normally have done, in the case of their own and no longer have the effective control over them; the size of the revenues can be reliably evaluated; it is probable that the economic benefits associated with the transaction are frozen to the entity; transaction costs can be reliably evaluated.

A sales promise does not generate revenue accounting. For the goods delivered under a consignment contract, it is considered that the delivery of the goods from the consignor to the consignor takes place on the date when the goods are delivered by the consignor to his clients. Thus, the consignor of the goods under the consignment regime recognizes the revenues from the sale when the consignor manages to sell the goods and not when the consignment is placed in the consignment.

The recognition of the revenues, respectively of the expenses in the profit and loss account or as income in advance, respectively expenses in advance

For the correct classification from the point of view of the accounting normalization of expenses and incomes in advance versus amounts representing advances received and paid, we must take into account the provisions of the law, as follows:

- the elements presented in the annual financial statements are evaluated in accordance with the accounting principles, according to the accounting of commitments. Thus, the effects of transactions and other events are recognized when the transactions and events occur (and not as cash or cash equivalents are collected or paid) and are recorded in accounting and reported in the financial statements of the related periods;
- based on the accounting of commitments, the entities must record in accounting all the revenues and expenses, respectively the debts and debts resulting as a result of legal or contractual provisions,
- respecting the principle of economic prevalence over the legal entity, which aims to record in accounting and faithfully present the economic-financial operations, in accordance with the economic reality, highlighting the rights and obligations, as well as the risks associated with these operations;
- in the case of the amounts received/paid as advances for goods/services to be provided/received subsequently, we have the situation of their classification as advances granted to the suppliers, as well as advances received from the customers and are recorded in accounting in separate accounts. (409, 419);
- in the case of expenditures/incomes incurred during the period, but which are related to subsequent periods, they must be presented under the heading of expenditures/incomes in advance to be borne on a per capita basis of expenses/incomes, based on a due date, in future periods (471, 472).

These accounts mainly record the following expenses and incomes: rents, subscriptions, insurance, and other expenses incurred in advance, respectively the incomes from rents, subscriptions, and other incomes related to the following periods.

Example of an accounting monograph:

1. Issuing an advance invoice for 20% of the total value of some services that will be provided later

supplier/provider	**beneficiary**
411 %	401 %
419	409
4427	4426

2. The invoicing and collection of a space rental contract, the contract duration of two years.

supplier/provider	**beneficiary**
411 %	401 %
472	471
4427	4426

Conclusion: when we have advances received/paid correctly is the highlighting in the accounts 409, - "Suppliers - debtors" / 419 - "Customers - creditors" and in the case of commitments made during the current period but which are related to subsequent periods the highlighting in the accounts 471- "Expenses recorded in advance" / 472 - "Revenues registered in advance".

The classification of the participations as being held in the long term or in the short term

The classification of the participations as being held in the long term or in the short term must take into account the principle of the economic prevalence over the legal one.

Example of an accounting monograph:

a) long-term securities

Acquisition of shares to another entity: 1,000 shares * 3 lei (purchase price), with payment by bank

265 Other fixed assets = 5121 bank accounts in lei 3,000 lei

2. These securities entitle to a dividend of 0.1 lei/share. Dividends are collected through the bank.

5121 Accounts at banks in lei = 761 Income from financial assets 100 lei

3. Sale of shares at 4 lei/share.

• removal from management - at the entry value (3 lei/share)

6641 Expenses regarding the financial assets ceded = 265 Other fixed assets 3.000 lei

• Registration of the sale income (4 lei/share)

461 Miscellaneous debtors = 7641 Income from financial assets ceded

• Actions received free of charge:

265 Other fixed assets = 1068 Other reserves

b) short-term securities:

A company acquires 1,000 shares from another unlisted entity at a price of 5 lei/share. Over 3 months, he sells the shares at a price of 6 lei/share.

• Acquisition:

501 Shares held by affiliated entities = 5121 Bank accounts in lei 5,000 lei

• The sale :

5121 Bank accounts in lei = 6,000% lei

5081 Other investment securities 5,000 lei

7642 Short-term investment gains yielded 1,000 lei

• What happens, in the same example, if the shares purchased are listed, the purchase is made through a broker who receives a commission of 200 lei?

Acquisition:

% = 461 Different debtors 5,200

5081 Other investment securities 5,000

622 Expenses regarding commissions and fees 200

Subsequent sale at 6 lei plus commission 100 lei is recorded as follows:

461 Different debtors =%

5081 Other investment securities 6,000 lei

7642 Short-term investment gains yielded 1,000 lei

622 Expenses regarding commissions and fees = 461 Debtors various 100 lei

• Actions received free of charge:

5081 Other investment securities = 768 Other financial income

Framing the reductions granted, respectively primates, to commercial or financial discounts.

According to the Order of the Minister of Public Finance no. 1.802 / 2014 for the approval of the Accounting Regulations regarding the individual annual financial statements and the consolidated annual financial statements, as subsequently amended and supplemented, the reductions granted to clients may be commercial or financial.

The commercial reductions include (point 76 paragraph (7) of OMFP no. 1802 / 2014):

- rebates - received for quality defects and practiced on the sale price;
- the discounts - are received in case of sales exceeding the agreed volume or when the buyer has a preferential status;
- returns - are price reductions calculated on all transactions with the same third party during a given period.
- the financial reductions are in the form of settlement discounts granted for the payment of the debts before the normal term of demand (point 77 paragraph (1) of the OMFP no. 1802 / 2014).

Accounting treatment of reductions

The way of recording the reductions in accounting is different depending on the type of reduction, respectively commercial or financial, which is why I will analyze the two cases separately.

Trade discounts are recorded in accounting differently depending on the following aspects: they are granted at the time of invoicing and recorded on the purchase invoice; they are granted after invoicing and entered on another invoice; they represent events after the balance sheet date. As for the buyer - the commercial discounts granted by the supplier and recorded on the purchase invoice adjust in order to reduce the purchase cost of the goods. If the commercial discounts entered on the purchase invoice fully cover the value of the purchased goods, they are recorded at fair value accounting:

• on account of current income (account 758 "Other operating income") in the case of stocks;

• on account of advance income (account 475 "Investment subsidies") in the case of tangible and intangible assets. The income in advance related to these fixed assets is included in the profit and loss account for the life of the respective fixed assets.

Regarding the seller - the revenues from the sale of goods or services are adjusted by the value of the discounts granted.

Commercial discounts granted after billing and entered on another invoice include commercial discounts related to goods and commercial discounts related to the provision of services.

The commercial reductions related to the goods, as regards the buyer, in order to determine the way in which the discounts are recorded in accounting, he will have to analyze the following aspects:

• if the purchase of products and the receipt of the commercial discount are treated together. In this situation, the commercial discounts received after invoicing adjust the cost of purchasing the goods;

• whether the goods to which the reductions are related are still under management. If the stocks for which the subsequent reductions were received are still in operation, the commercial reductions received after invoicing correctly the cost of the stocks to which they refer. On the other hand, if the stocks for which the subsequent discounts were received are no longer in management, they will be shown separately in the accounting (account 609 "Commercial discounts received"), on account of the third-party accounts.

As far as the seller is concerned, in order to determine how the discounts are accounted for, he will analyze them from a single point of view, namely whether the two transactions (sale and reduction granted) are treated together, more precisely if they take place. in the same moment.

If the sale of products and the granting of the commercial discount are treated together, the commercial reductions granted after invoicing adjust the sales revenue.

Trade discounts granted after billing, regardless of the period to which they refer (respectively if they are granted at the time of sale or separately), are shown separately in the accounting (account 709 "Commercial discounts granted"), on account of third parties.

The commercial discounts related to the services provided/received after the invoicing, regardless of the period to which they refer, respectively whether they are received/granted or not concurrently with the provision of services (treated or not together), are clearly distinguished in the accounting, in the case to the buyer with the account of account 609 "Commercial discounts received", and of the seller through the account 709 "Commercial discounts granted", on behalf of third party accounts.

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When trade discounts are events subsequent to the balance sheet date leading to the adjustment of the annual financial statements, they are reflected in the financial statements for the reporting year, based on supporting documents, and are recorded on the balance sheet date, in the case of the buyer in the 408 accounts. " Suppliers - invoices not received ", and in the case of the seller in account 418," Customers - invoices to be drawn up ". The reductions to be received, recorded at the balance sheet date in the 408 accounts, correct the cost of the stocks to which they refer if they are still under management.

Regarding the accounting treatment of financial reductions, irrespective of the period to which they refer, they are recorded in the accounting as follows: in the case of the buyer, the financial reductions received from the supplier represent the income of the period and are recorded in the account 767 "Income from discounts" obtained ", and in the case of the seller, the financial discounts granted are expenses of the period and are recorded in the account 667" Expenses regarding the discounts granted ".

Fiscal treatment of reductions

I will analyze the tax treatment of the reductions from the following aspects: the profit tax, the tax on the income of micro-enterprises, and the value-added water tax, as follows:

Regarding the tax on profit, according to art. 25 para. (1) of Law no. 227/2015 regarding the Fiscal Code, with the subsequent amendments and completions, for determining the fiscal result are deductible the expenses incurred for the purpose of carrying out the economic activity, including those regulated by normative acts in force, as well as the registration taxes, contributions and contributions due to the chambers of trade and industry, employers' organizations and trade unions.

Price reductions, whether they are commercial (granted for quality defects, in case of sales exceeding the agreed volume or when the buyer has a preferential status), or they are financial (settlement discounts granted for the payment of debts before the normal term of demand), are performed for the purpose of carrying out the economic activity. Therefore, the expenses with the discounts granted are deductible when calculating the corporate income tax, and the revenues from the price reductions received represent taxable income.

The art. 47 of the Fiscal Code, the micro-enterprise is defined as a Romanian legal person who, on December 31 of the preceding fiscal year, cumulatively fulfils the following conditions: has obtained revenues, except for those obtained from the activities of banking, insurance, and reinsurance and capital markets, outside the legal entities that carry out intermediation activities in these fields, in the field of gambling or exploration, development, the exploitation of oil fields and natural gas; made revenues, other than those of consulting and management, in the proportion of over 80% of the total revenues; achieved revenues that did not exceed the equivalent in lei of 500,000 euros; its share capital is owned by persons other than the state and the administrative-territorial units; it is not in dissolution, followed by liquidation, registered in the trade register or in the courts, according to the law.

According to art. 51 of the Fiscal Code, the tax rates on the income of micro-enterprises are 1% for those who have one or more employees and 3% for those who do not have employees.The taxable base on which these quotas are applied is established according to art. 53 of the Fiscal Code and constitutes the income from any source, from which the value of the commercial discounts granted after billing, recorded in account 709, is deducted, and the value of the commercial discounts received after billing, recorded in account 609 is added.

Regarding VAT, there are the following situations: the reductions granted at the time of delivery / invoicing and the reductions granted after the delivery / invoicing.

According to art. 286 paragraph (4) lit. a) of the Fiscal Code, the tax base for deliveries of goods and services performed within the country does not include the discounts, discounts, rebates, discounts, and other price reductions, granted by the suppliers directly to the customers at the time the tax is due, according to point 31 paras. (1) of the Government Decision no. 1/2016 for approving the Methodological Norms for the application of Law no. 227/2015 regarding the Fiscal Code, with the subsequent modifications and completions, respectively the norms given in the application of art. 286 paragraph (4) lit. a) of the Fiscal Code, rebates, discounts, rebates, discounts, and other price reductions are not included in the tax base if they are granted by the supplier/provider directly for the benefit of the customer at the time of delivery/provision and do not, in fact, constitute remuneration for a service or delivery.

According to art. 287 lit. c) from the Fiscal Code, the tax base is reduced if the rebates, discounts, rebates, and other price reductions are provided in art. 286 paragraph (4) lit. a) is granted after the delivery of goods or the provision of services.

Regarding the reporting of transactions from the point of view of value-added tax, the commercial and financial reductions will be highlighted in:

- the purchase/sales journal, separately, if they are granted after billing;
- form 300 "Value Added Tax Return", separately, when they are granted after invoicing. In the case of internal operations, the registration will be made in the lines of purchases of taxable goods and services, respectively deliveries of goods and services, according to the VAT rate applicable to the operation;
- form 394 "Informative statement regarding the deliveries/deliveries and purchases made on the national territory" - the discounts received from the Romanian commercial partners / granted to them;
- form 390 VIES "Summary statement on intra-Community supplies/purchases/services" - discounts received from the trading partners in the European Union / granted to them.

The obligations regarding the invoicing according to art. 319 para. (20) of the Fiscal Code states that when the rebates, discounts, rebates, and other price reductions are not included in the unit price of the goods and/or services sold, the invoice must contain them as well.

According to art. 330 paragraph (2) of the same normative act, if the rebates, discounts, rebates, and other price reductions are granted after the delivery of the goods or the provision of the services, the suppliers of goods and/or the service providers must issue invoices, which are also sent to the beneficiary, as follows:with the values entered with the minus sign or, as the case may be, with an indication that the respective values are negative when the tax base is reduced; without the minus sign or without the indication that the respective values are negative if the tax base is increased.

Regarding the auto invoice according to art. 319 para. (3) of the Fiscal Code, the beneficiary of a commercial reduction issues a self-invoice in order to adjust the deductible tax, provided that the goods supplier/service provider does not issue the commercial reduction invoice in accordance with the provisions of art. 330 paragraph (2), respectively, with the values, entered with the minus sign or, as the case may be, with an indication that the respective values are negative when the tax base is reduced.

The invoice will be issued at the latest by the 15th day of the month following the one in which the reductions were granted. In the event that the supplier complies with the billing rules provided in art. 330 paragraph (2) of the Fiscal Code, the beneficiary is not obliged to issue the invoice.In the case of price reductions, it is considered that the event that generates the obligation to issue the auto invoice occurs on the date when the customer benefits from the discount. If the invoice issued by the supplier/provider for the same adjustment and having the same value is received after the invoice is issued, a reference will be made to the issued invoice without it having any further effect on the deductible tax adjustment.

IV. CONCLUSION

The prevalence of the economic over the legal is a basic principle that we must take into account in the economic activity. The presentation of the values within the balance sheet items and the profit and loss account is made taking into account the economic background of the transaction or the reported operation, not only of their legal form.The observance of this principle aims to record in accounting and the faithful presentation of the economic-financial operations, in accordance with the economic reality, highlighting the rights and obligations, as well as the risks associated with these operations. The economic-financial events and operations must be highlighted in accounting these are produced, based on the supporting documents.The documents underlying the registration in the accounting of the economic-financial operations must reflect precisely how they are produced, respectively, to be in line with reality. Legally existing. Under ordinary conditions, the legal form of a document must be in accordance with the economic reality. In rare cases, when there are differences between the fund or the economic nature of an operation or transaction and its legal form, the entity will record these operations in accounting, respecting their economic fund.

The entities have an obligation to take into account all the available information when accounting for the economic-financial operations so that the situations in which the nature of the operation, determined on the basis of the economic prevalence principle over the legal one, differs from the one that would be established in the absence are extremely rare. Application of this principle.

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