

FISCAL RISK ANALYSIS – BENCHMARK FOR FISCAL CONTROL IN ROMANIA

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Abstract:

The study shows the fiscal realities from Romania, plays and summarizes the effects of the legislative measures adopted in order to improve fiscal behaviour of taxpayers. The main objective of this study was to highlight the manner in which the Romanian authorities of fiscal control was adopted their controlling strategy according to the current economic situation. Study reveals that legal regulation of risk analysis contributes to enhancing the effectiveness of tax control and drawing attention to the need for increasing transparency in the selection of taxpayers that will be subject to the tax inspection.

Key words: risk analysis, taxpayer, tax control, tax legislation, Romania

JEL classification: E62, H22

1. INTRODUCTION

Control, as the principle of management (public or private), ensure efficient use of resources to achieve a goal or set of goals agreed upon in advance by means of a plan. By controlling at the level of public finance aims to not only the formation of public financial resources, but also how such monies are spent, for the purpose of economic growth. For the public sector or for public administration, efficiency means, on the one hand, defining a goal and, on the other hand, the measurement of the obtained result (Matei, 2009).

In the literature there is an absolute consensus regarding the importance of financial control in the area of public finances. As a advanced form of financial control, fiscal control is in the sphere of administration of tax claims, having a triple purpose: the formation of fiscal resources, tax compliance and, last but not least, the maintenance of confidence in the tax system.

Lately, amid global macroeconomic imbalances, but also and diversification of activities and innovation in the digital area, the risk management concerns were amplified. Accepting diversification of risk factors in terms of tax behavior, tax administrations have been constrained to become more efficient even in conditions of shortages of material and financial resources.

Recent studies reveal that "comprehensive analysis and management of fiscal risks can help ensure sound fiscal public finances and macroeconomic stability" (IMF, 2016). To do this, tax administrations must adapt its organisational structure and create "operational units of information intelligence and risk analysis and implementation of risk management as an integrated tool for all decision-making processes and planning" (Radu and Cojan, 2009).

The main purpose of the study is to highlight the manner in which the Romanian tax control authorities have adapted the control strategy so that it influences positively the behaviour of the fiscal subjects and, at the same time, to temper the existent tension between the contributors, on the one hand, and the fiscal system, on the other hand. The methodology used for the elaboration of the article is hypothetico-deductive, the quantitative and qualitative analysis leading to the formulation of relevant conclusions.

The study starts with the presentation of the general framework of fiscal control in Romania and then focuses on risk analysis as a preliminary activity to tax control itself. In two distinct sections there are presented the coordinates of the specific risk analysis for both individual

taxpayers and taxpayers organized as legal entities. The last section summarizes the results and offers some conclusions.

2. THE GENERAL FRAMEWORK OF FISCAL CONTROL

Control is a measuring process of performance/efficiency/effectiveness of initiation and undertaking of some actions that are meant to assure the desired results.

In Romania, at the level of public finances, the financial control can take three forms: legislative, executive and proper. The Court of Auditors has control over the forming, administration and usage of financial resources of the State and the public sector. In subsidiary, in the Romanian supervision system there are entities of control and audit in the public domain.

While the financial control aims to identify ideal stuff, to find practical realities and to compare them, the ultimate goal being to establish measures to remove non-compliance and improvement of future work, the financial audit has the mission to collect evidence in order to be able to express an opinion regarding the regularity and fidelity of the financial-accountant records, ensuring that the financial reports are offering an accurate and complete image of the patrimony and the result of the exercise (Moroşanu, 2013). The financial audit may find that accounting systems and internal controls are operating effectively or that is not working effectively (Zaiceanu and Hlaciuc, 2013).

As specialized activity, inside of the financial control is the fiscal control distinguished. According to the legal framework, the fiscal control comprises all the operations accomplished by the fiscal organs in the interest of checking the taxpayer's/payer's way of accomplishing the obligations envisioned by the active legislation. The fiscal control aims to ensure the conformation of the taxpayer behaviour to two types of regulation: fiscal and accountant regulation.

The fiscal control it is incorporate to an ample set of activities of tax receivable administration alongside: fiscal registration, declaration, establishment and collection of fiscal claims, issuance of fiscal administrative documents, settlement of appeals against administrative fiscal documents, assistance/guidance of tax payers/payers and infliction of sanctions, adequate to the action severity and the legal frame, when finding illicit fact of fiscal or accounting.

From the perspective of the diversity of the accomplished activities, literature signalizes and the modern practice approves that the classical goal of the fiscal administration has been abandoned in favour of the modern approach; in the new context, fiscal administration has no longer only the role to detect fiscal evasion and inflict sanctions, but also to ensure conformity to the fiscal behaviour of contributors.

According to the Code of fiscal procedure, the fiscal control can be accomplished in one of the following forms: tax inspection, unannounced control, anti-fraud control, verification of fiscal situation of individual persons, documents' verification.

1. *The tax inspection* aims to check the legalism and conformity of fiscal declarations, fairness and accuracy of executing the fiscal obligations by taxpayers.

The aim of tax inspection also includes the check-out or establishment of the basic taxing and the actual associated situations, respectively, the establishment of main fiscal obligations. The comprehension area of fiscal examination is very ample, containing all the entities/people (no matter their organizational form) who have the responsibility to establish, collect or pay the fiscal obligations envisioned by the law. Not only general fiscal examination, but also partial fiscal examination imply a preliminary selection of the taxpayers/payers, based on a risk analyze. The methodology utilized in the setting of fiscal examination includes: sample random checking, exhaustive checking and electronic checking. Depending on the nature and the dimension of the taxpayers, the duration of the fiscal examination fluctuates between 180 and 45 days and there is also a positive correlation between the duration of the examination and the dimension of taxpayers. The result of the examination materializes into a fiscal inspection report, on the basis of which is issue a tax decision (for the positive and negative differences of fiscal obligations associated with modifications with the same sign of taxing bases), respectively the decision not to modify or, as the

case, to modify the taxing bases, but without establishing the differences for main fiscal obligations. The taxpayer is informed during the fiscal inspection regarding the findings and finally about the fiscal consequences, having the right to present, in writing, the point of view regarding to the findings. The decision made by the fiscal inspection organ can be denied under legal circumstances.

2. *Unannounced control* (without the preliminary notification of the taxpayer/payer) is materialized through on factual situation and documentations verifications (consequence of existence of certain data and clues about breach of fiscal legislation), and through on the crossed controls, examinations, analyze and evaluations of the specific fiscal risks. Not exceeding 30 days, this type of control complies with certain rules of conduct, finalizes with a record of the finding and gives the taxpayer / payer the right to express his opinion in writing about the findings of the persons who have carried out the control.

3. *Anti-fraud control* is an operative and unforeseen check-out accomplished by anti-fraud inspectors, aiming to complete thematic control operations (these are check-outs that pursue acknowledgement, analyze and evaluation of a specific fiscal risk of one or more fixed economic activities) or current control operations (check-outs in all the places where goods and services are commercialized, produced or stored, or lucrative activities for prevention, detection and rebutment of any documents and actions that are prohibited by the internal regulatory or community documents). At the completion of the anti-fraud check-out, the anti-fraud inspectors conclude the control minutes/documents, according to the law.

4. *Fiscal situation of individual persons check-out performed by the central fiscal organ* is being gradually accomplished, starting with the risk analyze (for the possible risk establishment), selection of the target group and the preliminary documented fiscal check-out. A significant difference (more than 10% of the declared income, but not less than 50.000 lei) between the declared income by the individual person (or payer) and the estimated income, calculated based on the personal fiscal situation, will determinate to continue verifications by communicating to the taxpayer the checking notification. The cooperation between the taxpayer (individual) and the control authority (central fiscal organ) is very important, it can be materialized through the presentation of scripts or essential information for clarifying the factual situations. The examination's result of the personal fiscal situation, registered on a written report that contains the factual and legal findings of the fiscal organ, it is presented to the taxpayer, who is also offered the possibility to express the point of view, in writing. Based on the report, the fiscal organ will issue, as the case, the tax decision or the decision to stop the examination, if the taxing base does not adjust.

5. *The documentary examination* does materialize through the execution of the fiscal coherency analyze of the fiscal situation of taxpayer, based on documents and information existent in the fiscal file or transmitted by third people/institutions. The existence of differences between the level of fiscal debt, income or taxable goods and/or information regarding these, declared by the contributor/payer, determine the fiscal organ to request explanations and documents in order to clarify the fiscal situation. As the case, depending on the examination result, the fiscal organ issues the tax decision or applies the necessary measures for keeping the law.

The effectiveness of fiscal administration involves the collection of taxes by applying typology of tax control activities to combat and prevent acts of evasion and tax fraud (Leonida, 2016).

3. RISK ANALYSIS - PRELIMINARY ACTIVITY OF THE TAX CONTROL IN FACT

Tax controls are based on risk analysis carried out by tax authorities to identify and assess risks of non-compliance by taxpayers with the obligations under tax law followed by the management and use of the information thus obtained for the purpose of carrying out tax administration activities (Law No 207/2015 on the Fiscal Procedure Code).

The fiscal risk analysis is the object of activity of a specialized organizational structures within the tax administrations and represents an important benchmark on which taxpayers to be

subjected to tax inspection or fiscal anti-fraud control are selected. This is because the regular control of all taxpayers would be a complex task that would exceed the logistical and human resources of the National Agency for Fiscal Administration (NAFA).

As an integrated tool for all decision-making and planning processes of control activities, risk analysis is based on a combined system of tax harmonization and classification of taxpayers associated risks. Based on a multi-criterial estimation the taxpayers are divided in three different categories: low fiscal risk, medium fiscal risk and high fiscal risk.

We take notice to the fact that, in the majority of the cases, the risk analysis is an internal procedure (specific to the control organ) and it is not explicitly discussed in the fiscal legislation. Therefore, the decisions to select the taxpayers, who would be subject of the fiscal examination or anti-fraud control are internal and unilateral and the selection criteria do not enforce external justification.

As a particularity, it is remarkable the fact that taxpayers' selection, who will be subjects of the fiscal control, can be also based on the requests received from other institutions of the State or the content of other normative documents, which establishes the obligation of the fiscal verifications. For example, tax inspections are required in the case of high-risk VAT negative returns or when insolvency is required, respectively, when cross-checking signals this need.

Summing up the debates on this issue, we identified a number of issues underlying the decision to select the tax subjects to be controlled:

- a) aspects regarding reports (failing to submit statements in time or repeatedly submitting corrective statements; negative VAT reporting without request for reimbursement; differences in statements on intra-Community acquisitions; certification of tax returns);
- b) aspects regarding the dynamics of financial results of the taxpayer (sudden fluctuations of financial results; loss registered for several consecutive years);
- c) aspects regarding stakeholders (transactions with inactive societies or with societies without a valid identification code; illegal employment of workforce; debts registered to public budgets);
- d) aspects regarding the nature of transactions conducted by taxpayer (mismatch between the transactions' juridical form and the economical substance of these; the disparity between deliveries and acquisitions of goods/services declared by the taxable person and the partners; differences in intra-Community acquisitions);
- e) aspects regarding the fiscal organ (no check-out in the last five years);

It is important to specify that, in the fiscal risk analysis, the criteria for selecting taxpayers are permanently adapted to the objectives of the control activity. This is the reason why the legal setting does not establish a set of standard criteria based on which to select taxpayers to be subject to fiscal control.

In the fiscal domain, the main advantage of a risk management program is effectiveness; control organs identify, analysis and evaluate the risks and then take preventive measures, so that they do not materialize. The accumulated effects of these actions are reflected in the fiscal claims encashment degree and the level of fiscal conformation.

Elements that justify the necessity of risk management implementation in the fiscal area are:

- a) risk management enforces management style modification, not only at the taxpayer (by increasing fiscal conformation), but also at the level of fiscal administration (by approaching the taxpayer); risk management in the fiscal area has a triple proactive, prospective and reactive role;
- b) risk management facilitates the effective accomplishment of the examination objectives; the purpose of any fiscal administration is reaching a maximum level of control degree of taxable income and taxes simultaneous with allocation of minimal expense; it is essential that fiscal control organs concentrate their efforts on what is truly important and the binomial of effort-effect to be optimum; risk analysis identifies fiscal risks of the taxpayer, leading to optimizing the control activity, so that only the high-risk taxpayers are examined;
- c) risk management ensures the basic conditions for a strong internal examination; the internal financial control aims and provides reasonable insurance that the goals would be achieved,

resulting that risk management is one of the important means, which help accomplish this, because risk management aims exactly the administration of the threats, which could impact the objectives negatively; risk analysis is the accomplished activity that aims to identify risks of not declaring the fiscal claims, evaluate, administrate them and also utilize them in order to establish a fiscal inspection opportunity or anti-fraud control.

4. COORDINATES OF FISCAL RISK ANALYSIS IN CASE OF INDIVIDUAL TAXPAYER

Within this section, we will refer to the Tax Compliance Ensure Program for individuals with fiscal risk initiated by NAFA using the results obtained under the Tax Compliance Ensure Program for individuals with great wealth.

The program pursued the income check-out and their declaration beginning with 2011. Targeted were people with significant material possessions (immovable properties, luxury vehicles, other significantly valuable material goods, claims earned by crediting companies and/or individuals, significant money deposits in bank accounts from Romania or other countries, high personal costs) and unjustified by the declared income. The personal financial situation examination of individuals began with a risk analysis which allowed reconsideration of the initial sample regarding the preliminary fiscal examinations, based on documents.

Risk analysis consisted of: a) the definition of the individuals' group characteristics with a potential risk of not declaring; b) establish the specific source of data of the group; c) collect and formalize the information; d) elaboration of specific risk indicators for the group; e) establish the minimum risk accepted by fiscal administration; f) process and elaborate a list of people who surpass the minimum risk; g) suggestions for accomplishing the preliminary documented fiscal evaluation.

An important step of risk analysis is evaluating fiscal risks displayed by individuals; evaluation is accomplished by comparing the value of declared income with: treasury flows, value of patrimonial growth and the value of personal expenses. The evaluation of risk of non-declaration has a particular treatment, the appreciation is based on the difference between declared income of the taxpayers/payers on the one hand, and the personal fiscal situation, on the other.

According to the legal framework [1], the management activity (through the tax administration) of the risks related to individuals is achieved by: a) processing and elaborating the list of persons who exceed the minimum risk (differences higher than 10%, but not less than 50,000 lei); b) elaboration of proposals for carrying out the preliminary documentary tax check, considering the value of the risk of non-declaration; c) making use of the results of the previous tax verifications, by updating the data and information held with those obtained in the framework of the preliminary tax verifications.

Note that during the checks, the choice of the indirect method of determining income depends on the fiscal organ, related to the nature of the available information or documents.

For example, the source and the fund utilization method will be chosen if the analyzed subject utilizes funds and their value surpasses the identified sources. The cash flow method will be selected when a large volume of transactions is detected through bank accounts, with the individual depositing significant cash in those accounts. On the other hand, if it is found that the person's net wealth increased significantly over the period under review and the value of the patrimonial assets at the beginning and at the end of the period can be established with sufficient accuracy, then the method chosen will be that of the net patrimony.

Under the Tax Compliance Program for individuals with fiscal risk, a significant sample that was subject to risk analysis (295 thousand persons) was selected from the total taxable persons in Romania (14.3 million).

From this last sample, only 132 thousand people were selected with differences between estimated income and declared income higher than 10% but not less than 50 thousand lei. There have been identified 5884 people with high risk degree. The first stage of the documentary tax

verification aimed at 313 people. The territorial distribution of the 313 persons (of which 65 are from Bucharest and Ilfov County) is shown in Figure no.1.

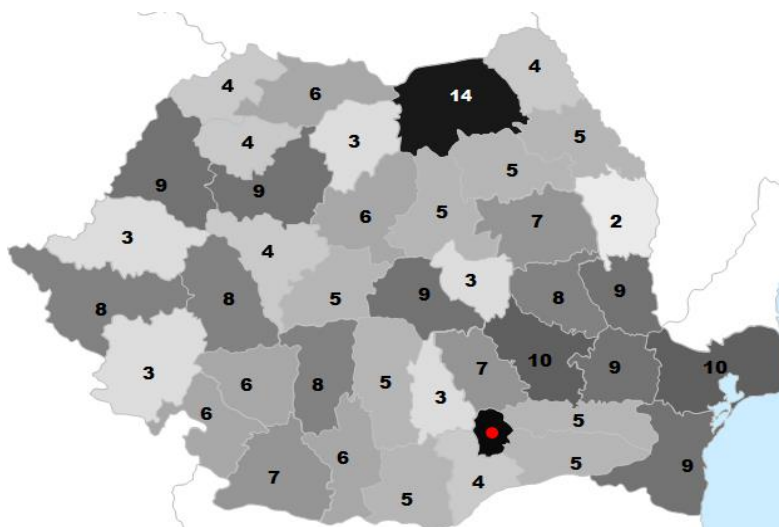


Figure no. 1. Geographical distribution of individuals with high fiscal risk

Source: Processing after NAFA, Tax Compliance Ensure Program for individuals with great wealth, 2015

Based on the collected data, there have been identified income obtained by the examined people, compared subsequent with the declared income. 11 out of the first 30 preliminary accomplished fiscal examinations have revealed the existence of a significant difference between income, which has been estimated based on the personal fiscal situation determined through the evaluations and the declared income, in this context have been released notifications of fiscal examination, the involved people have to provide to the central fiscal organ justifying documents (including the patrimony and income declaration) or relevant clarifications.

The fiscal preliminary documented fiscal examinations have also concerned the requested information from the thirds, like: banks (these have been asked for the debit movement of the accounts); institutions that administrate records of imobil and mobil goods (land, buildings, vehicles, ships, airships); Trade Records county offices; territorial fiscal organs; employers (who have been requested justifying and financial-accountable documents); fiscal authorities from other countries etc.

The applied risk strategy was not limited only control activities. There have also been targeted: the fiscal conformation increase on the individual taxpayers' section with substantial wealth and for the fiscal risk identification has been applied an ample palette of treatments, including assistance services offering for contributors, informing and educating them in order to recognize and keep the fiscal legislation, transmission (to the people who make the program object) of notifications regarding their fiscal obligations, dialog with the professional organizations and the practitioner in fiscal domain, in order to identify problems that contributors deal with and the most suitable solutions, public communication of messages witch encouraging fiscal conformation (NAFA, 2015).

5. PARTICULARITIES OF THE FISCAL RISK ANALYSIS REGARDING LEGAL ENTITIES TAXPAYERS

The final aim of risk analysis is to provide support to maximize voluntary tax compliance for large taxpayers. The tax administration carries out the fiscal control on the assumption that not all taxpayers should be included in the control plan. Beginning from 2017, large taxpayers (in

Periodically, the risk analysis is updated by reassessing the above criteria, aiming at introducing new criteria based on the results of tax controls and the behavior of taxpayers about the avoidance from tax declarations and payment.

As a collateral measure of reduction of fiscal evasion and fraud preoccupation, NAFA has also revised the basis criteria, based on which inspectors would decide whether they respond affirmatively to the registration request (social center, fiscal record of the manager/associates and risk analyze regarding intention and capability of companies to accomplish economic activities which involve taxable and/or VTA free operations, with deduction right.

Table no.1 Indicators used for risk analysis

No.	INDICATORS	Scoring	
1	Owner's equity	- less than or equal to 0	100
		- greater than 0	0
2	Debt ratio = borrowed capital / owner's equity	- greater then 0 and less then or equal to 1	0
		- greater then 1	50
3	Profitability = profit / turnover	- equal to 0	70
		- greater then 0	0
4	Tax declarations not submitted during the reference period	- none (all statements submitted)	0
		- one	50
		- more then one	100
5	Outstanding tax obligations during the reference period (except for amounts for which payment facilities are available)	- obligations at the beginning of the period less than the liabilities at end of period	50
		- obligations at the beginning of period greater than liabilities at end of period	30
		- it does not exists	0
6	Number of refunds processed without checking in last 12 months	- up to 3 inclusive	0
		- between 4 - 6 inclusive	20
		- between 7 - 9 inclusive	40
		- between 10 - 12 inclusive	60
7	Share of amounts not approved for the refund in the total amount requested for the refund [(amounts requested - Approved amounts / amounts requested]	- share of unapproved amount <= 2%	0
		- 2% > share of unapproved amount <= 4%	5
		- 4% > share of unapproved amount <= 6%	15
		- 6% > share of unapproved amount <= 8%	35
		- 8% > share of unapproved amount <=10%	45
- share of unapproved amount > 10%	60		
8	Total amounts returned in the last 12 months without verification	- between 5.000 lei - 50.000 lei, inclusive	0
		- between 50.001 lei - 150.000 lei, inclusive	10
		- between 150.001 lei - 350.000 lei, inclusive	20
		- between 350.001 lei - 550.000 lei, inclusive	30
		- between 550.001 lei - 750.000 lei, inclusive	40
		- between 750.001 lei - 1 mil. lei, inclusive	50
		- greater then 1.000.000 lei	60

Source: Taking over NAFA (2015), Fiscal risk indicator sheet, available at <https://static.anaf.ro/static/10/Anaf/transparenta/Anexanr2laproceduraFisaindiciscfiscal.htm>, accessed on 30.06.2017

In virtue of the same preoccupations, the romanian legislator has revised the Fiscal Procedure Code in order to improve the methodology of fiscal inspection; concretely, the application of fiscal inspection sphere has been extended, a new control method has been introduced (exhaustive examination), the temporary imposition decision has been instituted, the accomplishing of fiscal inspection period has been extended (this is achievable in the prescription term of the right to establish fiscal debts), the period of time when contributors can present (in writing) their point of view regarding the fiscal inspection ascertainments was increased and the possibility of taxpayer to give up at the final discussion has been regulated.

6. CONCLUSIONS

Conforming to the regulatory framework, risk analysis is centered on identifying and assessing tax risk factors specific to taxpayers' activity, with the purpose of substantiating the decision to achieve / not carry out tax inspection or anti-fraud control.

The study appreciates the effectiveness of risk analysis - as a stage in fiscal control - but draws attention to the need to increase the transparency of this activity. Currently, risk analysis is carried out within the tax administration, without the taxpayers being notified / consulted, and they have no right to object to the criteria under which they are included in different risk classes. We appreciate that by improving communication and consultation between tax administration and taxpayers, it becomes easier to ensure voluntary compliance.

On the other hand, documentary verification of fiscal risk analysis indicators may generate erroneous results. For example, a number of goods such as jewelery, which are not subject to any form of advertising of the property (as system of cadastre and land registry for real estate) can amass financial resources appreciable and at the same time, not registers in the taxpayer's tax returns.

Limitations and future research directions. The study presents the risk analysis methodology from the perspective of the legal framework in force in Romania. This approach could be accused of relative representativeness or non-correlation with other variables. Beyond this limit, we believe that the results of the study are valuable and can be a starting point for further research to quantify the extent to which risk analysis can contribute to better voluntary compliance, along with increasing efficiency and effectiveness in collecting duties and taxes to the consolidated state budget.

[1] *The legal framework of reference was established starting with 2011 through the adoption of Government Emergency Ordinance (GEO) no.117 / 2010 (which was amended and supplemented, inter alia, by GEO no.92 / 2003 - the Old Code of Tax Procedure) and by Government Decision (GD) no. 248/2011 on the procedure for the application of indirect methods for the establishment of the adjusted tax base (amended and supplemented by GD no 773/2011), legal provisions currently repealed and replaced as of 01.01.2016 by Law no. 207 / 20.07.2015 regarding the new Tax Procedure Code and the Order of NAFA President no. 3.733 / 2015 on the approval of indirect methods of determining income and the procedure for its application*

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