

RECENT ADAPTATIONS OF THE LEGAL STANDARDS APPLIED TO TAX LIABILITIES THROUGH GOVERNMENT ORDINANCES

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Abstract:

Our endeavour is directed at revealing certain difficulties identified during the actual process of levying the government revenue that have “lasted” in time, as well as the methods used in solving or merely alleviating such difficulties, as imposed and applied by the Executive authority. Among the above mentioned issues, we will specifically refer to the measures taken to discourage tax payers from using arrears as a source to fund their own activities, with important mentions on the special correction (“undeclared tax penalty”) for cases when certain sums payable to the public budget are not declared (either totally or partially). The 2nd part approaches the setting up of the ancillary obligations system which is specifically directed at protecting the real value of the fiscal claims and at sanctioning defaults of payment upon the due date.

Key words: Tax procedure code, Government, debtors/tax-payers, taxes receivable, ancillary obligations, special correction.

JEL classification: K40

1. INTRODUCTION

The institutional mechanisms designed to ensure the smooth operation of the budget system can be rather rigid at times, and this fact has been often approached in the professional literature. Renowned researchers and academics specialised in the field of financial-budgetary and taxation law have actually approached this specific issue in a compared manner in their papers, often pointing out the available solutions, based on the best practices identified in the juridical and financial systems of other states [1-4]. To a certain extent, the author of the present paper has approached the proposed topic by revealing the strengths and also the weaknesses identified as concerns the establishment and enforcement of financial and taxation law regulations, both during the transition of the Romanian economy to the market economy, and also after the year 2007 when Romania became a member state of the European Union [5-10], in the context of sustainable development [11]. Our endeavour is directed at revealing certain difficulties identified during the actual process of levying the government revenue that have “lasted” in time, as well as the methods used in solving or merely alleviating such difficulties, as imposed and applied by the Executive authority. Among the above mentioned issues, we will specifically refer to the special correction (“undeclared tax penalty”) for cases when certain sums payable to the public budget are not declared (either totally or partially) and the double standard of the ancillary obligations. Additionally, we will make certain references to the defective and unequitable standards, in terms of the sums, and in relation to the ancillary obligations.

2. THE SPECIAL CORRECTION (“UNDECLARED TAX PENALTY”) FOR CASES WHEN CERTAIN SUMS PAYABLE TO THE PUBLIC BUDGET (EITHER TOTALLY OR PARTIALLY) ARE NOT DECLARED

The tax-payers attempt to default on the tax liabilities due to the public budget – namely to correctly ascertain and declare the tax liabilities and then to pay in due time – is a separate case to be sanctioned. Thus, the New Code of taxation procedure (NCPF) [12], which is currently in the project stage, provides the enforcement of a special correction in the case of a possible “oblivion” to

declare revenues (either totally or partially). We are specifically referring to the “undeclared tax penalty” penalty (**UTP**), whose enforcement refers to the “application of a fair treatment in terms of the tax-payers’ behaviour, in order to differentiate those who fill in their tax return correctly but do not pay and those who do not declare their revenues.” Certainly, the measure ensures the submission of accurate and timely tax return forms and the subsequent payment of the tax liabilities, thus helping alleviate tax evasion. The detection of the failure to declare revenues through tax investigation, will entail the enforcement of **UTPs** that may differ depending on the amount of the unpaid liability. If the sum does not exceed the 25% margin related to each tax liability declared by the tax-payer in the tax return submitted for a certain taxation period, the **UTPs** will amount to 5% of the main tax liabilities undeclared by the tax-payer and established by the tax investigation authority (through tax return enforceability). If tax-payers exceed the margin, they will be liable to pay a fine that is five times higher than in the previous case (25%). Nevertheless, the **UTP** is limited to 1 000 000 lei every time the specific enforcement measures cause it to exceed this specific margin. This limit does not apply if the undeclared amounts were generated by deeds falling under the scope of Law no. 241/2005, concerning the prevention and combating of tax evasion [13]. On the contrary, in this case, the penalty increases by 100%. However, the **UTP** is reduced by 75% if the main tax liabilities established through a decision are paid by the due time as set by the Taxation Procedure Code or are legally set to be paid by instalments. We noted that the taxation procedure code also provides a measure that is in the favour of the tax-payer, namely that **UTPs** are not levied when the tax differences are generated after the interpretation conducted by the National Agency of Fiscal Administration (**NAFA**) in that particular tax-related issue. However, the prerequisite is that the respective interpretation would result from documents such as circular letters, instructions or methodological guidelines.

3. THE DOUBLE STANDARD OF ANCILLARY OBLIGATIONS

As far as taxation is concerned, the introduction of the ancillary obligations system is only directed at protecting the actual amount of the due tax liability and at sanctioning the default on payment. However, as the New Taxation Code continues to be delayed, we will also be stuck in a situation in which interests calculated according to two separate formulae will be levied when tax liabilities consisting of the same amount and with equal maturities are delayed. That is the case because when we deal with the state budget, defaulting on the payment of taxation liabilities will result in an 0.03% interest rate per day (10.95% a year) for delays, but also late fines of 0.02% a day (7.3% a year) as well. Adding up, we get 18.25%, which means that forgetting/omitting to pay an amount in the **NAFA** account for one year entails, apart from the payment itself, another one fifth of the capital. On the other hand, if the tax-payer’s “oblivion” entails the default on a payment due to the local authority, the penalty will be even higher. This entails that, apart from the principal debt (tax, etc.), an *ancillary* tax is added, which, in the case of a one year delay, tends to amount to one quarter of the initial sum. Defaulting on the payment of tax liabilities due to the local authorities would namely result in late fines of 2% per month or fraction of a month (thus amounting to 24% a year). Such a regulatory action, apart from the above shown differences in the applied financial treatment, is regarded by finance professionals as “a defective and unequitable regime in terms of the sums related to ancillary payments” [12]. And here are the arguments. Upon examination, the described system (that of the ancillary payments applied for defaulting on the due payments to the local authorities, consisting of interests and late fines) also applies to the additional tax differences established by the supervision authorities. The major inconvenience arising is that the system does not take into account the two taxation obligation *to do*, namely (1) to correctly ascertain and state the amount of tax liability and (2) to pay the respective tax liability in due time. The tax-payers’ behaviour in terms of the obligation to accurately state their tax liabilities is practically of no importance. Thus, taxpayer **A**, who correctly states his tax liability (but does not pay), is fined just as taxpayer **B**, who hasn’t paid the same amount due to the fact that his tax return was inaccurate. What we believe is rather counterproductive is that there is no distinction between

the fact that **B** is in breach of two obligations stated in the taxation law: to correctly ascertain and state his tax liabilities and, as a consequence, to pay the respective liability in due time.

4. CONCLUSIONS

The references we have made in the present paper have taken into account only a few of the recent adaptations related to the legal standards applied to taxation liabilities – adaptations conducted by means of government ordinances. Clearly, they are all important, but the institutional mechanisms that were meant to ensure the smooth functioning of the public budget are yet to be improved. They should lead to the increased efficiency of NAFA/ DGAF and augment the voluntary compliance degree (VCD) with the payment of tax liabilities. We would like to close by showing that the above mentioned degree (VCD, percentage), at the end of 2014, hasn't increased significantly, as previously expected. In exact percentage points, it has reached 83.7, by half a percentage higher than it had amounted to in 2013.

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