Reflections on the Right of Appreciation of the Fiscal Authority with an Impact on Young Entrepreneurs

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Abstract

The importance of this paper concerns the right of appreciation of the fiscal authority in quality as administrator of fiscal receivables due to the consolidated budget, which holds a primordial role in the collect a revenues due by taxpayers. The young entrepreneurs, as taxpayers, have an obligation to know rigorously transparency mechanisms established by law, in order to fulfill a fiscal obligations due at state budget, but the role of fulfillment of the right of appreciation of the fiscal authority is to create the premises of fulfillment of rights provided fiscal legislation. The exercise of the right of assessment by the fiscal authority must comply with the requirements established by the Fiscal Procedure Code, being a prerogative of the democracy system within a rule of law. The conduct of the fiscal authority, the role and importance of examining the facts of each taxpayer, the limits established by law within which all this is exercised lead to a careful analysis, viewed from the perspective of the young entrepreneur. This category of entrepreneur is less in the spotlight of the fiscal authority, so that, this study reveals situations for which there must be serious concerns on the part of the actors involved in order to improve the condition of the young entrepreneur.

Keywords: entrepreneur; fiscal authority; fiscal obligation; taxpayers; fiscal legislation; tax risk.

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1. Introduction

The right of assessment of the fiscal authority is regulated in article 6 paragraph (1) of the Fiscal Procedure Code, as subsequently amended and supplemented the legislator understanding to grant an authorization in a legal form actions within the limits of their attributions and competences in relation to “the relevance of the fiscal facts by using the means of proof provided by law and to adopt the solution based on the legal provisions, as well as on complete findings on all the edifying circumstances in concerned at the time of the decision.”

Following the prerogative established by law, the fiscal authority “must take into account the opinion issued in writing by the competent fiscal authority to the respective taxpayer/payer within the activity of assistance and guidance of taxpayers/payers, as well as the solution adopted by the fiscal authority within a fiscal administrative act or by the court, by a final decision previously issued, for similar factual situations to the same taxpayer/payer.”

In this approach, I set out to conduct research on how the exercise of the right of assessment is actually reflected, conditioned by the observance of the rights and obligations of the parties in the fiscal legal relations, especially when one of the parties is a young entrepreneur.

As stated in an opinion “only by rhythmically supplying the amounts from taxes and duties” it „will be possible to respect and realize the other constitutional rights of citizens”[1], young entrepreneurs as young people with initiative in training for the Romanian economy, contributes to stimulating the labor force and the product market, resulting in its own contribution to the creation of revenues to the state budget.

2. Theoretical Background

2.1. The notion of the right of assessment in relation to the fiscal obligation due to the consolidated general budget

Art. 1 point 27 of Law no. 227/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented, defines the fiscal obligation as that “obligation to pay any amount which is due to the general consolidated budget, representing the main fiscal obligation and the accessory fiscal obligation”, which in my opinion, is a brief and synthetically expressed definition in relation to another definition: „The fiscal obligation consists in the duty to pay on behalf of the public budget (state budget, state social insurance budget, local budgets) taxes, fees and other budgetary contributions regulated by law.”[2]

In another opinion, the definition of fiscal obligation is “the obligation established unilaterally by the state through normative acts, in charge of natural or legal
persons, called taxpayers, to pay a certain amount of money, within the established term, on account of the state budget.”[3]

From the definition contained in the above-mentioned normative act, there are two categories of fiscal obligations: main and accessory. Within the main obligations those obligations due by each taxpayer are included, consisting of taxes, duties, contributions, as well as the obligations of the fiscal authority to reimburse the amounts collected, without these being due and to reimburse the amounts due to the taxpayer if he has made a payment and he had no such obligation.

Accessory obligations represent those obligations in relation to the principal obligations, which consist of fiscal interest, penalties or increases.

Tax liabilities are classified as follows [4]:
a) Taxes and fees:
a.1. profit tax;
a.2. income tax on micro-enterprises;
a.3. income tax;
a.4. the tax on incomes obtained from Romania by non-residents;
a.5. the tax on representations;
a.6. value added tax;
a.7. excise duties;
a.8. local taxes and fees;
a.9. construction tax.
b) Compulsory social contributions:
b.1. social insurance contributions, due to the state social insurance budget;
b.2. the contribution of social health insurance, due to the budget of the National Fund of social health insurance;
b.3. insurance contribution for work, due to the general consolidated budget.

In the specialty literature, I came across several definitions of taxes and fees, of which I have mainly noted the definition of tax [5] as that “mandatory monetary contribution and with a non-refundable title, due, according to the law, the state budget by individuals and legal entities for the income which they obtain or the property which they possess.” At the same time, before formulating this definition, the notion of tax has become defined, still in 1936, by which it was mentioned [6]: “The tax is a monetary contribution, charged to private individuals, through public force, definitively, without provide, in order to cover public expenditure.”

From the meaning of the tax definitions, we can keep in mind that this payment:
a) it is always a monetary contribution;
b) the persons subject to this payment are persons (physical or legal) who obtain income or own goods;
c) the tax is provided by law;
d) the payment of the tax is final, therefore, non-refundable;
e) the destination of the tax payment is the state budget.

The notion of tax is another component of payment from physical and legal persons, having the role of generating revenues within the state budget.

The definition of the notion of tax is specified in the specialty literature, being “the payment made by physical or legal persons legal services for their services by public institutions or authorities.”[7]

Thus, in an attempt, from a synthetic point of view, to define the notion of tax, this would mean: that activity carried out by the public fiscal authorities, for the benefit of physical and legal entities, in exchange for a payment.

Compulsory social contribution, as defined in article 7 point 10 of the Fiscal Procedure Code is that “Compulsory sampling carried out under the law, which aims protection of obliged physical persons to insure against certain social risks, in exchange for which these persons shall enjoy the rights covered by that levy.”

According to fiscal law, within the notion of “fiscal authority” those fiscal structures are part organized at central, local and other public institutions that administer fiscal claims, having attributions and competencies clearly delimited by normative acts.

The notion of “right of assessment” is a relative notion, the legislator not understanding to present a definition of this right nor to evaluate, to concretely detail, the objective criteria underlying the exercise of the right, but only presents certain limits of action of the fiscal authority, lacking the determination of the material value from a quantitative and qualitative point of view.

We must specify in this paper the relevance of article 3 paragraph (2) of the Code of Fiscal Procedure, which states that, the provisions contained in the Civil Code and in the Code of Civil Procedure is completed in those situations where the tax procedure- constituting a common law procedure - does not have legal regulations, completion provided that, that it be applicable to tax legal relations between fiscal authorities and taxpayers. This is of significant importance in identifying the exact limits of the right to assess, as I will present below.

2.2. Aspects of fiscal procedural law regarding the exercise of the right of appreciation

Application of fiscal legislation on the territory of Romania is carried out by the fiscal authorities, in a unitary way, having the obligation to
properly monitor and establish fiscal claims, and the decisive role is played by the Ministry of Public Finance, as a specialized authority of the central public administration, by coordinating efficiently and effectively the legal provisions.

As regards the exercise of the right of assessment, we identify two ways to achieve:

1. **On the basis of procedural issues**, which the fiscal authority is required to comply with, by cumulating them, to issue a decision stating:
   a) the fiscal situation of the taxpayer, by using the means of proof provided by law;
   b) the adoption of a judicious fiscal solution, correct and timely, according to the legal provisions;
   c) determining the concrete situations for the elaboration of complete findings.

2. **Based on documents representing**:
   a) the opinion issued in writing by the competent fiscal authority to the respective taxpayer, but this consideration must be realized only within the activity of assistance and guidance of the taxpayer;
   b) the solution adopted by the fiscal authority within a fiscal administrative act or by the court, by a final judgment, previously issued, for similar factual situations to the same taxpayer.

We must point out that, in the socio-economic reality of taxpayers there are situations, similar to those provided by the normative act, in the sense of the existence of differences between the state of affairs and the information taken into account when issuing a written opinion or when issuing a fiscal administrative act to the same taxpayer. In this case, the legislator ordered the fiscal authority, the right to record those findings in accordance with the actual tax situation and fiscal legislation, having the obligation to state in writing the reasons for not taking into account the prior opinion.

The conduct of the tax authority is reflected in paragraph 2 of Article 6 of the Fiscal Procedure Code, by setting limits. One of the limits concerns the reasonableness of the right to assess, in the sense of maintaining a balance, of a reasonable reason in weighing the situations presented above, which, together with the state of equity - as a feature that characterizes the tax system[2] - it must ensure a fair balance between the aim pursued and the means used.

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2 “According to equity, each payer contributes by paying taxes and fees on the realization of budgetary resources according to salary income. Thus, the tax must be higher for those earn higher incomes and lower for those with lower incomes. This is done by differentiating tax
In addition to the procedural aspects, the legislator has provided an additional obligation to the fiscal authority, in the sense that, prior to the issuance of a final decision, it must also take into account the appropriate time (term) for the taxpayer, for the exercise of a fiscal right and/or for the fulfillment of a tax obligation, as provided in the normative act that regulates the fiscal procedure.

For well-justified cases and on a thorough substantiation, the time (term) may be extended, but only with the consent of the head of the fiscal authority.

2.3. The young entrepreneur - vulnerable category of the right of appreciation

The role of the entrepreneur in the economic development of the country occupies a significant place, for the state to achieve its budget revenues. In view of this aspect and its representativeness in the market economy, on the basis of his entrepreneurial initiatives, he has the right to enjoy certain facilities of the right of assessment by the fiscal authority. This right, I believe, is given by the ability with which they develop the innovative idea, the necessary knowledge they possess, to invest your creativity in the success of the company, as well as the determination they have to start realizing their dreams. The young entrepreneur must also have a wealth of knowledge, skills and competences, but also leadership, commitment, responsibility and dynamism.

3. Arguments to support the thesis

Fiscal legislation does not make such a distinction, therefore we consider that it is necessary, as in determining the factual situation, concrete situations for the elaboration of complete findings, as well as when issuing a fiscal solution, the legislator to define the factual and administrative framework or to explain factual hypotheses, to provide distinct criteria for performing the risk analysis.

For lege ferenda, the concrete way of accomplishment, can take place, by amending and supplementing paragraph 6 of Article 6 of the Code of Fiscal Procedure, in the sense of doubling the reasonable time (term) to exercise its right or to fulfill its fiscal obligation due to the state budget.

rates, and for this purpose the most convenient is the system of progressive quotas what are used to tax income, real estate transactions or inheritance taxes. This feature is not always observed in economic and fiscal practice in Romania.”

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At the same time, when performing the risk analysis, according to the general criteria according to which the class / subclass of fiscal risk is established, according to article 7 paragraph (7) of the Fiscal Procedure Code and knowing that, it is accomplished for the purpose of identifying, assessing and managing the risk of non-compliance, representing a landmark in the activity of fiscal administration of taxpayers, for lege ferenda, the fiscal authority may initiate a proposal for the issuance of a subsequent administrative act, in order to eliminate young entrepreneurs from conducting risk analysis, for a sufficiently limited period of time.

This proposal could lead to a concentration of entrepreneurs on the conduct of the company's business, with the ultimate goal, creating an emerging market with the immediate intention of making a considerable profit.

4. Conclusions

Finally, I consider that the mechanism for the exercise of the right to assess by the fiscal authority is not easy for the young entrepreneur, in the current form provided in article 6 of the Fiscal Procedure Code, since, the Romanian fiscal system, although it enjoys a social and stimulating function, these functions are neglected in the application of the activity of young entrepreneurs.

Moreover, as we have identified in the paper, current regulations are not sufficiently useful and relevant, the factual frameworks of these categories of taxpayers are different, but at the same time similar, when it is at the beginning of activity and then a good amount of time, until they can achieve a sustained financial consolidation.

Also, the management of the fiscal authority must take into account that exercise of the right of assessment “addressees of decisions which significantly affect their interests they must be given the opportunity to make their views known in a useful way on the elements on which the administration intends to base its decision”. [8]

However, in relation to the above and as it results from the text of the legal provision, according to the first method, on the basis of procedural aspects, the fiscal authority issues only one opinion in its assistance and guidance activity and not in the issuance of a decision of assessment, when it is exercised.
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