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TAX AMNESTY FOR SOCIAL CONTRIBUTION IN ROMANIAN LEGAL FRAMEWORK

Abstract:

When the state representatives realise that the fiscal liabilities are too hard to comply with and the taxpayers are very tempted to avoid the payments, alternative solutions might be used. In order to move on with their daily activities, the taxpayers need to ease tax burden and a solution to rebalance the general budgetary collect/spend mechanism is to consider an amnesty regulation. Some legally stated fiscal liabilities are to be cancelled, in order to facilitate the continuity of the activity of the taxpayers and to insure further payments to the budget, despite the present diminish of the budgetary incomes. The recent Romanian fiscal amnesty is analyzed, starting with its motivations, the applicable procedures and the possible misinterpretations. The fiscal authority role and actions are presented, in comparison with the action of the beneficiaries of the law. Also, the results amnesty generated and the influence on the taxpayers' activity are analyzed, through the relevant case law already generated on the topic. The negative influence of the tax amnesty is pointed out as a result of the research.

Keywords:

contributions, fiscal amnesty, tax regulation.

JEL Classification: K22, K31, K34

INTRODUCTION SECTION

The public budget policy is an exclusive state prerogative, both for the incomes and for the expenditure actions. The state, through its representatives, has to collect money and is entitled to spend them, in accordance with the current necessities and its current governing program. Considering the direct effects and its particular importance, tax policy has to be transposed in normative acts, in order to generate mandatory liabilities for the taxpayers. The fiscal amnesty is a method for the state legislative authority to cancel particular tax liability, when justified motivation demands it. It is a measure of short time loss, in favour increasing, in long time perspective, the budgetary incomes. Despite its reasonability, it is an extra-ordinary measure, mainly because of the possible side effect of discouraging the conduct of the honest taxpayers. Therefore the regulation for tax amnesty should be wisely and prudently adopted.

The social contributions hold an important role in the system of the resources for the public budget. In the present context, social contributions influence the mobility of the human resources and determine political attitudes. When they determine high pressure on the taxpayer, the objectives of social contribution regulation is misunderstood and generates social insubordination. The role of executive is to observe and to correct such conduct, proposing the right solution for reinstalling the rule of law.

LITERATURE REVIEW

Naturally, fiscal policy should reflect the critical point of view of political power of the state concerning taxes and implicitly, the direction of action for the government, triggering options regarding the criteria for determining tax contributions and

specific techniques of taxation as those related to spending for public, economic and social actions. Therefore, the scope of fiscal policy includes both obtaining fiscal resources available to public authorities and making public expenditure on account of such resources. [1]

Interventionist role of the state budget is, in fact, permanent and its development depends on various circumstances. It is constantly due to the nature of the budget, as act that authorizes the public revenues and expenditures each year and that inevitably has social and economic effects on both the payers of taxes and charges on beneficiaries of the budget. Contextual developments of the role of the state budget are more pronounced in phases of economic restructuring and in the time of modernization of public services. During these pressured times, the decision for revenues and annual expenditures is remarkable as a financially policy option of parliaments and governments of each country. The types and proportions of the authorized expenditure on the estimated revenue ground these options and the law approving the budget of each state finally expresses them. [2]

When the fiscal pressure exceeds certain limits, return on taxes may diminish, since taxpayers will manifest phenomena of resistance to taxation. In times of higher tax burden, taxpayers will get to perform operations that do not comply with tax, accounting or otherwise, entering the field of tax evasion. [3]

Fiscal policy is closely related to the allowance or budgetary policy, to be developed jointly by the competent public authorities. Fiscal connection with the social policy stems from the fact that some social objectives shall be fulfilled through fiscal measures, such as tax cuts, tax relieved, application of deductions from taxable material etc. [4]

In the present time, we may observe the governments' preoccupation to relief the tension on the social security and health budgets, the growth of the income not being a valid solution. [5] Therefore, the fiscal amnesty may be an option for supporting the private actors of the market, helping them to continue their activity and insuring, in long term, budgetary incomes. The law in force ensures, at least on declarative level, the concentration of financial capital on public services and supplier operation, with the respect of transparency. [6]

In the context of EU integration, we have to notice that the tax regulation prerogative is mainly reserved to Member State's competence, accordingly to the principle of subsidiarity. [7]

THE RATIONAE OF ADOPTING THE LAW ON FISCAL AMNESTY

Tax amnesty is not a new method to rebalance the incomes of the public budget; it has been used before for different type of fiscal liabilities.

Tabel 1

Examples of recent tax amnesty regulations

		year of tax amnesty law	subject
1	Australia	2007, 2009	repatriated funds
2	Belgium	2004	income tax for individuals
3	Canada	2002, 2007	tax related offence, unreported incomes
4	Germany	2004	tax evasion
5	Greece	2010	all debts could be paid only up to 55%

6	Italy	2001, 2003, 2009	mainly, repatriated assets
7	Portugal	2005, 2010	tax evasion
8	Russia	2007	tax crimes
9	South Africa	2003	tax evasion
10	Spain	2012	undeclared assets/in tax havens
11	United States	2009, 2012	federal tax amnesty program

Previous experiences in improving tax collection using tax amnesty determined Romanian fiscal authority to act in this way during 2015. Backed by four former delimitation criteria for independent and dependent activities, provided by Art. 7 (2) tax code (criteria which, moreover, are irrelevant in terms of taxation), tax authorities proceeded to the reclassification as dependent activities for independent professions organized as individuals. It is the case of those particular situations when independent professions are paid in subsistence allowances or they collect *per diem* incomes.

Usually, dependent activities are entitled to collect salary and, almost in every fiscal system, the income taxes paid for salary are obviously higher than those paid as authorized individuals. Yet the risks of business are different. In Romania, for instance, an independent individual does not receive annual leave or sick leave allowance unless he/she has paid contributions to public/private health system. These individuals have to pay different taxes and are obliged to contribute to the public system pensions. [8]

We have to state that the motivation for adopting tax amnesty regulation aroused from the fiscal authorities necessity to justify their conduct. Their logic has entirely a different nature: according to their subjective interpretation of the former fiscal

code, the income tax is reinstated, without giving pension contribution period, because taxes are higher. Additionally, their behaviour is justified by the advertisements and statistics of how effective, fair and cooperative are the fiscal authorities, in collecting money and helping the state budget to grow. [9]

The question that legitimately appeared is whether the reinstatement given by the new regulatory requirements is correct, as the regulation was highly interpretable. Clearly, taxpayers against whom the order is addressed to reinstate their activities went to the court of law, demanding justice and the fiscal authorities loses many of these cases. In these circumstances, we wonder if, somehow, the real beneficiaries of this amnesty law are precisely tax authorities who should justify abusive and discretionary manner in which they acted in all the litigant situations. It is not difficult to distinguish who is responsible for aberrant circumstances created: the tax authority and not the taxpayer, who only used the regulation in their own favour.

After long debates and pros and cons, Law no. 209 was finally published in the Official Gazette on 20 July 2015. Although the law itself was named Law for cancellation of debts, public perception is that of the amnesty tax law.

THE CONTENT OF THE LAW ON FISCAL AMNESTY

The first estimated effects of the amnesty law should be that hordes of criminals would benefit from its effects, discouraging the honest taxpayers. This unfortunate effect is present if we consider the "generosity" of the legislative authority, present in the following situations when the regulation states that the payments are not due:

- For the main tax liabilities, as well as for related accessories, established by tax decision issued and communicated to the taxpayer as a result of the reconsideration/reappointment of an activity as dependent;
- For principal tax liabilities and/or related accessories, established by tax decision issued and communicated to the taxpayer as a result of receiving amounts of money during the delegation and posting by employers who have worked on territory of another country; The pursuit of an occupation in another member state of the EU is the general right of any European citizen. [10] The amnesty law does not affect in any way the content of the EU regulation in this respect.
- For differences in tax added value added on the income for intellectual property rights and related accessories, established by tax decision issued and communicated to the taxpayer as a result of overruns and/or failure to register as a VAT taxpayer. If the taxpayer has exercised his right to deduct, under the law, when completing the first tax return application, after the decision for VAT taxpayer was issued, the tax authority does not cancel differences in value added tax and related accessories.

For all three categories mentioned above, the cumulative tax obligations are concerned, due to fiscal periods before 1 July 2015 and not paid until the entry into force of this regulation, on July 23, 2015 respectively.

- For health insurance contributions and the accessories concerned, established by the tax decision issued and communicated to the taxpayer, payable on a monthly basis by the individuals for whom the income is less than the minimum, for the fiscal periods between 1 January 2012 and end of the month before the coming into force of the law and which are not paid until the entry into force of the law. These provisions are applicable to persons who have no income and for whom the

monthly basis for calculating the contribution of health insurance is the legal minimum wage.

The new regulation states that the competent tax authority automatically performs the cancellation of all tax obligations listed above by issuing a decision to cancel the tax liability, which shall be communicated to the taxpayer.

PROCEDURES FOR APPLYING THE TAX AMNESTY

In the legal order of the EU, Romania included, the free movement of employers determined some particularities in tax collection. [11] Starting one month after the publication of the law, the Romanian government issued 4 procedures for application of the tax amnesty law. The documents refer to the cancellation of tax obligations for employees who received daily allowances abroad (considered by the fiscal authorities wages) and people who had earned below minimum wage and were required to pay contributions for health the minimum wage. [12]

We mention that in the same period was adopted the Law no. 225/2015 [13], exempting certain categories of persons to pay individual contributions to health and identify some cases where the provisions of these two laws overlap. In this case, the fiscal authorities have adapted the application procedure for effective implementation of both laws. For law enforcement purposes, they were taken a total of four procedures that can take into account the framing of a taxpayer in one or more situations stipulated by Law no. 209/2015. [14]

We present the 4 procedures, in the same order as they are included in the regulating document.

5.1 The main procedural issues

The tax audit structures or structures which are issuing administrative acts containing tax liabilities subject to cancellation, will perform a punctual identification of those who fall under the amnesty law. If there are other taxes that are not covered by amnesty in the reporting tax audit documents or tax decisions, the fiscal authority representatives will extract those obligations subject to cancellation. The persons responsible has to draw a list, which will be signed, duly approved and subsequently communicated to the precise department, which manages the particular taxpayer. There will be separate accounts for obligations to be cancelled that were previously communicated to the taxpayer, and accounts for those that have not been communicated yet.

5.2. The procedure to identify individuals for whom the health contribution is cancelled

This procedure comprises two parts: taxpayers who have earned income lower than the minimum gross salary (for who the obligation to pay health contribution is cancelled) and taxpayers who were granted by Law no. 225/2015 cancelling health contributions (mainly referring to children up to 18 years, pupils and students aged up to 26 years, pregnant women and young mothers).

Before cancelling the tax liability, the legal procedure requires verification if these people have achieved the following revenue categories: rental and leasing; investments; prizes and gambling incomes; fiduciary operation, according to Title III of the Tax Code; other sources as specified in art. 78 of the Tax Code. [15]

After completing these procedures, the fiscal authority representatives will prepare a final list that will be communicated

to the compartment with verifying and controlling responsibilities. People who have benefits from tax amnesty law will receive a decision for cancel tax liabilities previewed in the normative act.

5.3. Cancellation procedure of tax liabilities at the request of the taxpayer

If there are cases of individuals who might benefit from amnesty laws (Law no. 209/2015 on the amnesty and/or Law no. 225/2015 on the exemption from payment of health contributions) and for whom *ex officio* procedure was not carried out, they are entitled to request application of the exemption from payment of health contributions. In this regard, the core element of the procedure is getting by individuals from health fiscal authority a document attesting the insured status without paying contributions. Subsequently, the individual will address fiscal authority to obtain exemption from payment of health contributions. The final decision will be communicated, in printed format, to the individual in case.

5.4. The procedure for issuing the decision to cancel

The last part of the normative act we have analyzed includes the format for the decision to cancel of tax liabilities, respectively fiscal authority internal communication, archiving, use and storage of documents procedures, prepared for the actual implementation of the tax amnesty. We observe that in this fiscal amnesty law procedure that the main role is reserved to the fiscal authority, which is obliged to act *ex officio*. Still, in order to prevent any abuses for deliberately non-acting, the law includes this 4th procedure, providing the possibility to initiate the procedure for the beneficiary of the law.

CONCLUDING REMARKS

The Romanian tax amnesty regulation in 2015 was the solution for releasing the fiscal over-pressure on the small and medium businesses. The entrepreneurs that used their employees' work abroad, in the context of the EU free market, were mainly targeted. In the context of previous fiscal authority activity, there are some questions to be answered, related to the true beneficiary of the law. Considering the past misconduct, it seems that the fiscal authority itself is the main beneficiary of the amnesty and not the employers and the employees.

The amnesty laws generated the short-time effect of encouraging accurate taxation for the developing economic activity and the long-time effect of improving public budget income. The general idea that the tax amnesty is a minor present loss for insuring a major future tax collection was confirmed in the example of Romanian tax amnesty in 2015.

Some critics are to be mentioned. First, the regulation to implement the amnesty deserved some improvements (e.g. *ex officio* procedure had no sanction for non-implementation). Second, there are some side effects observed in the activity of disciplined taxpayers, who considered they were disadvantaged.

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