

EQUALITY OF WEAPONS IN THE FISCAL PROCEDURE

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Abstract

The problem of creating a solid balance, as much as possible, between the parts of the fiscal legal report becomes more and more necessary, as the imbalance between them becomes more and more severe. Obviously, restoring this balance rests first and foremost with the legislature, but neither should the tax litigation courts be kept far from achieving this goal. The paper presents in the first part a series of fundamental notions in this matter, namely the notion of fiscal procedure, fiscal legal report and subjects participating in this legal report, respectively in the fiscal procedure. The second part of the paper critically deals with the principles that govern the tax procedure because they are the key in which the letter and spirit of the law (the Code of Tax Procedure) must be understood and how it is applied. The paper retains the most recent legislative changes in the matter and highlights their shortcomings, both in terms of theory and especially of practice. It is about serious issues concerning the limitation of the taxpayer's right to be listened to when determining his tax situation. Such a regulation is tried to be justified by the importance of imposing and the need for speedy collection of public funds, but sight is lost of the fact that this is done by allowing abuses "covered" now by legal provisions. Also, formulations such as "reasonableness" or "fair proportion" are analyzed and criticized, which, according to the law, must prove or be considered by the fiscal body, formulations that can create the impression of a positive approach, but in the absence of some criteria for their objective assessment, they remain only subjective attitudes of some officials within the state fiscal apparatus. Last but not least, the principle of good faith is analyzed, which is established as a task of the taxpayer in relation to the fiscal body, losing sight of the fact that the idea of good faith itself is based on a positive and reciprocal attitude of the two parties. .

As a conclusion, we see that the fiscal legislator does not understand the need to ensure a real and consistent balance between the two parts of the fiscal procedure, so that throughout the Fiscal Procedure Code the equality of weapons remains an increasing necessity and in the absence of which the efficiency of the collection of the tax receivables remains an objective difficult to reach.

Key Words: *fiscal procedure, subjects of the fiscal legal report, principles of the fiscal procedure, equal treatment in the fiscal procedure.*

JEL Classification: [K 34]

1. Some introductory considerations regarding the tax procedure¹

1.1. Any legal procedure represents the activity carried out by the competent bodies in order to fulfill the attributions with which they have been invested by law. If we refer to fiscal procedure, it can be considered as all the acts and operations

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¹ In the doctrine of civil procedural law, it has been shown that, given that the system of procedural norms bears the official name of "Code of civil procedure", it could be considered that the matter of regulations of this nature, as well as the legal science corresponding to it, will be called procedural law. On the same line of argument, it can be shown that the fiscal procedure includes all the procedural rules codified and systematized in the Fiscal Procedure Code.

chronologically and logically integrated and systematized, carried out by the tax authorities and taxpayers in order to realize the tax receivables, in order to set up the public funds necessary to carry out the functions of the state and other public needs of national or local interest (I. Deleanu, 2001).

From a strictly formal perspective, the fiscal procedure represents a chain of acts and operations, expressly stipulated by law in order to create the optimal conditions necessary to achieve the objectives mentioned above.

The most important procedural provisions in tax matters are contained in the Fiscal Procedure Code. Thus, its object and scope of regulation² refers to the rights and obligations of the parties in the fiscal legal reports regarding the administration of the tax receivables due to the general consolidated budget, regardless of the authority that administers them. From this regulation we underline a set of observations.

First of all, we find that the fiscal procedural law includes all the regulations that refer to the modalities for the realization of the fiscal provisions or, in other words, the totality of the norms that regulate the modalities of the fiscal administration acts realization. (I Gliga, 1998)³.

Secondly, the law establishes that by administrating taxes, taxes, contributions and other amounts due to public budgets, it is understood the whole of the activities carried out by the fiscal bodies in relation to the fiscal registration, declaration, establishment, verification and collection of taxes, contributions taxes and other amounts due to the general consolidated budget,⁴ as well as with the resolution of the appeals against the fiscal administrative acts.

² According to art. 2 of Fiscal Procedure Code.

³ The fiscal procedure includes acts and operations prior to registration and assignment of the tax identification code, followed by acts and operations for finding taxable and tax objects, for calculating and individualizing the taxes or fees due by each taxable or tax subject, for payment and collection of taxes and fees for the benefit of the state budget and local budgets, as well as, from case to case, acts of finding and sanctioning the facts and omissions of tax evasion and forced execution of taxes and duties not fully paid and at the legal deadlines.

⁴ The general consolidated budget represents the whole of the component budgets of the budgetary system, aggregated and consolidated to form a whole (Law no. 500/2002 on public finances, as subsequently amended, article 2 point 7). In relation to the legislator's references to the notion of consolidated general budget, we consider that it is objectionable to refer to this legal institution to delimit the scope of the fiscal procedure. The general consolidated budget, in the light of Law no. 500/2002 regarding the public finances, includes all the public budgets that reflect the real financial effort (so the actual incomes and expenses, realized after eliminating the possible transfers between them), minus the local budgets of which the aforementioned law does not speak. However, local taxes and fees and any other amounts due to local budgets regulated by Law no. 273/2006 regarding the local public finances, as subsequently amended, is carried out according to the same fiscal procedure, as it is regulated by the Fiscal Procedure Code. For these reasons, we consider that it is more fair to show that the tax procedure is applied for the realization of all categories of amounts destined by law to feed the public budgets⁴, as they are regulated in the current legislation.

Third, we find that the provisions of the Fiscal Procedure Code are applicable to all budgetary claims, that is, to those called to feed public budgets, whatever their nature. This conclusion is also supported by the provision that the stipulations of the Fiscal Procedure Code also apply to:

- administration of customs rights;
- administration of mining royalties, oil royalties and royalties resulting from concession, lease and other contracts for the efficient exploitation of agricultural lands, concluded by the State Domains Agency;
- other budgetary receivables which, according to the law, are assimilated to fiscal receivables.

1.2. The provisions of the Fiscal Procedure Code are applicable to all subjects of fiscal legal reports. Within the relations of fiscal material law (therefore of the taxation reports), the Ministry of Public Finance, as a specialized subject is represented by the National Agency for Fiscal Administration and its territorial structures, which have attributions regarding the collection of revenues destined to central public budgets (of the state).

From the interpretation of the Fiscal Code⁵ it turns out that the same are the specialized subjects in the relations of fiscal procedural law.

The administrative-territorial units are represented by the local public administration authorities, as well as by their specialized departments. These are bodies with powers in the area of taxation and which were created to ensure the execution of the revenue part of the local budgets and implicitly the distinct record of the amounts destined to these budgets against the central (state) budgets. All these bodies with powers in the area of taxation are generically called, even by the legislature, fiscal bodies.

The second topic of the tax law report is the taxpayer (both in the case of material law and tax procedural reports).

Analyzing the situation of the taxpayer⁶ from the fiscal legal reports, we can see that this subject must also possess a certain quality, even if, in terms of it, the conditions are not as restrictive as in the case of the subject in the dominant position.

The quality of taxpayer derives from the law, and in the case of individuals, to acquire this quality is sufficient, in principle, the capacity of use of the subject. In this case, of course, the fulfillment of the obligations that derive from the taxpayer quality will be carried out by the legal representatives of the person who does not have the capacity of exercise.

⁵ Chapter IV, art. 14 and 15 paragraph 1, 3, 4, 5 of the Fiscal Procedure Code.

⁶ Art. 15, paragraph 2 of the Fiscal Procedure Code: the taxpayer is any natural or legal person or any other entity without legal personality that owes taxes, fees, contributions and other amounts to the general consolidated budget (and to the local budgets according to art.1, paragraph 1 Fiscal Procedure Code) according to the law.

Also, in his capacity as a taxpayer, a person having the capacity of exercise can be represented in the relations with the fiscal body by a proxy or a fiscal representative, but the representation is made within the limits of a written and registered power of attorney in the fiscal body. Appointing a proxy does not prevent the taxpayer from personally fulfilling the obligations provided by tax law, even if he has not revoked the power of attorney. Empowerment produces effects on behalf of the taxpayer. The revocation of the power of attorney operates in relation to the fiscal body from the date of filing the revocation act, in original or certified copy.

In case of representation of the taxpayer in the relationship with the fiscal body through a lawyer, the form and content of the power of attorney are those provided by the legal stipulations regarding the organization and exercise of the profession of lawyer.

The taxpayer without a fiscal domicile in Romania, who has the obligation to submit declarations to the fiscal body, must appoint a proxy, with the fiscal domicile in Romania, to fulfill, on behalf and from the patrimony of the taxpayer, the latter's obligations to the fiscal body.

This obligation is not maintained in the case of the taxpayer residing in a Member State of the European Union, respectively of the European Economic Area, as well as in the case of the taxpayer residing in a state that is part of an international legal instrument signed by Romania and which includes provisions regarding the administrative cooperation in the fiscal field and the recovery of the tax receivables.⁷

There are also situations in which the taxpayer, although established as a person, is unable to fulfill his tax obligations personally and has not a proxy, or his tax domicile is not known. In such circumstances, a fiscal guardian will be established.

The legislator expressly regulates the situations in which a person would be unable to fulfill the fiscal obligations. It is about the taxpayer without fiscal domicile in Romania, who has not fulfilled the obligation to appoint a proxy, or the absent, non-contributory taxpayer, whose fiscal domicile is unknown or who, due to illness, infirmity, old age or a disability of any kind, or even because of preventive arrest or imprisonment, cannot, personally, exercise and fulfill his rights and obligations as a taxpayer.⁸ The appointment of the curator will be made by the Court through a court decision which will also determine whether the curator will be remunerated, all the expenses incurred by this representation being borne by the taxpayer represented by the curator. And in this situation the representation is made on behalf of the representative.

The legal representatives of the natural and legal persons, as well as the designated representatives of the associations without legal personality, are obliged to fulfill the obligations that are according to the tax legislation to the represented

⁷ Acc. to art. 18 of Fiscal Procedure Code.

⁸ Acc. to art. 19 of Fiscal Procedure Code.

persons or entities. These representatives fulfill the fiscal obligations of payment of the persons or entities represented by those means that they administer. When the responsibilities are difficult or impossible to establish, the legislator calls on the institution of joint responsibility of all the subjects that could be targeted. In this regard, it is interesting to note that, if, for whatever reason, the tax obligations of associations without legal personality are not paid, the associates are jointly liable for their fulfillment.⁹

The quality of taxpayer can also be transmitted to other persons under the following conditions stipulated by law¹⁰:

- when the heir has accepted the succession of the debtor taxpayer;
- when there is a person who assumes, in whole or in part, the rights and obligations of the taxpayer - legal person subject to judicial division, merger or reorganization;
- when, following the opening of the bankruptcy procedure, it was settled who is the person responsible for the estate, as well as the limits of this responsibility;
- when there is a person who assumes the obligation of payment of the taxpayer by a payment commitment or by another act concluded in authentic form, with the assurance of a real guarantee at the level of the payment obligation.

The tax identification data of the taxpayers are the first and last names in the case of natural persons or the name in the case of legal persons and entities without legal personality, as well as the tax identification code and the fiscal domicile.

As a conclusion, the administration of the tax receivables represents the activities carried out by the fiscal bodies in relation to:

- fiscal registration of taxpayers / payers and other subjects of fiscal legal reports;
- declaration, establishment, control and collection of tax receivables;
- settlement of appeals against the fiscal administrative acts;
- assistance and guidance of taxpayers, both on demand and ex officio;
- the application of sanctions under the conditions of the law.

However, the administration of tax receivables is much more complex, by its nature and content. In order to make the collection of tax receivables more efficient, the legislator extends the tasks and competences of the fiscal body. Thus, he ceases to be just an intermediary between the taxpayer and the public budget, the legislature also investing it with managerial attributions such as the risk analysis that defines it as the activity carried out by the fiscal body in order to identify the risks of non-compliance with what regards the fulfillment by the taxpayer of the obligations provided by the tax legislation, to evaluate them, to manage them, and to use them for the purpose of carrying out the fiscal administration activities.¹¹ From the legal provisions presented above, as well as from the analysis of the

⁹ Acc. to art. 20 of Fiscal Procedure Code.

¹⁰ Art. 23, paragraph 2 of Fiscal Procedure Code.

¹¹ Acc. to art. 1, point (3) of Fiscal Procedure Code.

content of the entire Tax Procedure Code, we can observe that this applies for the purpose of collecting and administering fiscal debts, as well as budgetary claims.

2. The general principles underlining the accomplishment of the fiscal administration documents

The law regulates a series of general rules that must govern the conduct of all persons involved in the act of administration of taxes, taxes, contributions and any other amounts due to any of the public budgets. These principles are the following:

1) The principle of legality, according to which tax debts and corresponding obligations of the taxpayer can be only those established by law. Also, the procedure for administering the tax receivables is carried out in accordance with the stipulations of the law, and the fiscal body has the obligation to ensure compliance with the legal provisions regarding the fulfillment of the rights and obligations of the taxpayer or other persons involved in the tax procedure.¹²

2) The unitary application of the legislation is that principle which refers to the fact that the fiscal body is obliged to apply the provisions of the fiscal legislation on the territory of Romania unitarily, following the correct establishment of the amounts due to the public budgets.

In order to achieve this goal, the legislator establishes the obligation of the Ministry of Public Finance, as a specialized body of the central public administration, the obligation to coordinate the unitary application of the provisions of the tax legislation. Thus, within the Ministry of Public Finance the Central Fiscal Commission operates, which has responsibilities in elaborating the decisions regarding the unitary application of the Fiscal Code and the Fiscal Procedure Code, their subsequent legislation, as well as the legislation whose application falls within the scope of competence of ANAF.

If the Central Fiscal Commission is invested with the solution of a problem concerning the local taxes and fees provided by the Fiscal Code, the commission shall be completed with 2 representatives of the Ministry of Regional Development and Public Administration, as well as with one representative of each associated structure of the authorities of local public administration. In order to ensure the application of this principle, the decisions of the Central Tax Commission are approved by order of the Minister of Public Finance and are published in the Official Gazette of Romania, Part I.¹³

3) The exercise of the right of assessment refers to the fact that the fiscal body has the right to assess and interpret the relevance of certain situations or circumstances, in relation to the attributions and competences of the fiscal body, but also with the legal stipulations, so as to adopt that solution that considers it legal and based on the correct and complete knowledge of the state of affairs.

¹² Art. 4 of Fiscal Procedure Code.

¹³ Art. 5 of Fiscal Procedure Code.

In exercising its right of appreciation, the fiscal body must take into account the opinion issued in writing by the competent fiscal body to the respective taxpayer in the activity of assisting and guiding the taxpayers, as well as the solution adopted by the fiscal body in a fiscal administrative act or by the court, by a final judgment, previously issued, for facts similar to the same taxpayer. In the event that the tax authority finds out that there are differences between the tax factual status of the taxpayer and the information drawn when issuing a written opinion or a tax administrative act to the same taxpayer, the tax body has the right to record the findings in accordance with the actual tax situation and with the tax legislation and has the obligation to mention in writing the reasons why it does not take into account the previous opinion.

The legislature also stipulates that the fiscal body exercises its right of appreciation within the limits of reasonableness and equity, ensuring a fair proportion between the purpose pursued and the means used to achieve it. Whenever the tax body has to set a time limit for the exercise of a right or the fulfillment of an obligation by the taxpayer, it must be reasonable, in order to allow the taxpayer to exercise his right or fulfill his obligation. The term may be extended, for justified reasons, with the agreement of the head of the fiscal body.¹⁴

We cannot ignore that extremely subjective notions such as "reasonableness" or "fair proportion" are used, without indicating criteria or instruments for their appreciation so that, both the taxpayer and an organ with jurisdictional powers, can appreciate the way in which the fiscal body behaved in achieving this principle.

Also, the fact that the term can be extended only with the consent of the head of the tax body is likely to restrict or affect the taxpayer's right to be heard, which is intended to be a legal guarantee of a procedural nature placed in the hands of the taxpayer who must be able to defend himself against possible abuses of tax authorities. Such regulations are likely to break the so fragile balance between the tax body and the taxpayer, that should exist within the tax law relationships. It should be remembered that these legal relationships are authority relations in which the fiscal body has a dominant position with respect to the other subject of law with which it interacts, created by its role as an instrument of tax law enforcement, a role conferred also by the effect of the law. (Georoceanu, 2011)

¹⁴ Art. 6 of Fiscal Procedure Code.

4) The active role¹⁵ of the fiscal body is that principle based on which the fiscal body is entitled to ex officio review¹⁶, the state of affairs, to obtain and use all the information and documents necessary for the correct determination of the tax situation of the taxpayer. Also in accomplishing this principle, the fiscal body must notify the taxpayer of the rights and obligations incumbent upon him during the fiscal procedure¹⁷. Also, the fiscal body must guide the taxpayers in order to correctly apply the provisions of the tax legislation in force. This guidance will also be carried out ex officio, but even more if the taxpayer requests this. As can be seen, this principle is meant to give more force to the preventive-educational function, the fiscal activity in general, and the fiscal control one in particular.¹⁸

In the case of the tax receivables administered by the state fiscal body, the active role of the fiscal body is also transposed in the way of differentiated elaborating and using administration procedures by tax risk classes / subclasses in which the taxpayers are classified as a result of the risk analysis carried out by the fiscal body.

5) The official language in the tax administration¹⁹ is the Romanian language, which means not only that the officials within the tax authorities will speak in official circumstances only this language, but also that any tax registration in a foreign language will have to be accompanied by a translation into Romanian certified by authorized translators.²⁰

If petitions, supporting documents, certificates or other documents in a foreign language are submitted to the fiscal body, for which there are no authorized translators, the fiscal body will request that they are accompanied by translations in Romanian made or authorized by an embassy / consular office of the state in whose

¹⁵ The procedural-civil law also regulates the active role of the judge in the civil process. The doctrine of civil procedural law is unanimous in appreciating that it does not mean either subjectivism or any mixture or violation of the rights of the parties involved in the civil process. Following this argument, it should be pointed out that civil servants operating within the fiscal bodies are called upon to apply and comply with the tax law, so that this principle of the active role of the fiscal body (respectively of the civil servant involved) must be interpreted in the context of the respect of the taxpayer's right to defend himself or to administer the evidence that he considers conclusive in the correct establishment of the fiscal factual status that directly concerns him.

¹⁶ The fiscal body decides on the type and volume of examinations, depending on the circumstances of each case and the limits provided by law.

¹⁷ The notification of the taxpayers on the rights and obligations in the ongoing tax administration procedure is done in writing, especially, but it can also be done verbally, on which occasion the tax body will draw up a note stating the fulfillment of the obligation, as well as any other relevant details related to it. The note will be attached to the case file.

¹⁸ Art. 7 of Fiscal Procedure Code.

¹⁹ Art. 8 of Fiscal Procedure Code.

²⁰ The petitions, the supporting documents, the certificates or the documents drawn in a foreign language submitted without being accompanied by authorized translations, will not be considered by the tax body if it has requested the translation into Romanian, and the taxpayer / payer has not complied with the request.

official language the document was issued, otherwise they are not taken into account by the fiscal body.

As for the use of the languages of national minorities, this is allowed under the same conditions in which these languages are generally used in the administration²¹.

6) The right to be heard / listened to²² it is that principle according to which the taxpayer must be given the opportunity to express his point of view in relation to circumstances that are relevant in the decision taken by the fiscal body. (M. Bragaru, 2004) From this rule, the law also has a number of exceptions²³ such as:

- the delay in taking the decision determines a danger for finding the real fiscal situation regarding the execution of the obligations of the taxpayer or for taking other measures provided by law;
- the amount of the tax receivables is to be changed by less than 10% of the value of the tax debt previously established;
- the information presented by the taxpayer, which he has given in a declaration or a request, is accepted;
- enforcement measures are to be taken;
- decisions regarding the accessory fiscal obligations are to be issued.

We would like to underline that the idea of laying down exceptions to the principle of the right to be heard is serious and profoundly critical. This right is a fundamental one that finds its origins in rights the guarantees established by the Constitution of Romania and the European Charter of Human Rights such as the right to defense. A restriction of the right to defense, even if it takes place within the fiscal procedure and not the criminal process, can be equally serious, because it represents a limitation of the taxpayer's possibility to protect himself against the invasive and prejudicial intervention of the fiscal body on the person's patrimony. In this regard, we find it useful to recall art. 53 of the Constitution which refers to the restriction of the exercise of some rights or freedoms and which establishes that this situation can interfere in a democratic society only if it is absolutely necessary and justified by the need to "defend national security, order, health or of the public morals, the rights and freedoms of the citizens, the conduct of the criminal investigation, the prevention of the consequences of a natural calamity, of a disaster or of a very serious sinister". We believe that it is no longer necessary to underline that we are not facing any of the particularly serious situations taken into consideration by the constituent legislator, thus the regulation of exceptions to the

²¹ According to the stipulations of Law no. 215/2001 regarding the local public administration, as subsequently amended and supplemented.

²² Although it is expressly provided by the Fiscal Procedure Code, the right to be heard also results from the constitutional stipulations regarding the fact that Romania is a rule of law in which the rights and freedoms of citizens are guaranteed [art. 1 paragraph (3) of the Constitution]. Regarding these regulations, the specialized literature observed that the right to be heard represents a real right to defense, in the tax procedure.

²³ Art. 9 paragraph (2) Fiscal Procedure Code.

rule of the right to be heard/listened to is unconstitutional and also constitutes a violation of the right to a fair trial (procedure), in the vision of the European Charter of Human Rights.

On the other hand, in support of the above assertions, we have analyzed the situations that represent, in the tax legislator's view, exceptions from the rule of the taxpayer's right to be heard.

First of all, it is difficult to determine what may represent a "danger in finding the real fiscal situation" and how the state of danger can be appreciated. This assessment will be subjective, so it will be different depending on the person who is called to make this assessment, which will not be able to ensure a uniform application of the tax legislation. At the same time, the fact that the fiscal body, as part of the fiscal procedure and subject of the fiscal legal report, is again the one to make "an assessment", deepens the inequality between the subjects of the fiscal legal report, which makes us think at an excessive imbalance between them.

Secondly, taking as exceptions the fact that "the amount of the tax receivables is going to change by less than 10% of the value of the tax debt previously established", we think it is likely to bring significant damages to taxpayers, because such percentage applied to an important debt can make the difference between being or not being a legal entity. Therefore, we believe that such regulation is not only abusive, but even unconstitutional, as it seriously infringes the property rights of all categories of persons.

Thirdly, the right to be heard should not be limited by the fact that forced enforcement measures are to be taken or that decisions regarding accessory fiscal obligations are to be issued. On the contrary, these circumstances are likely to aggravate the taxpayer's situation and, as such, the more the right to be heard must be respected, because otherwise the premises of abuse of law are created. We remind on this occasion that from the moment the deadline is fulfilled the forced execution (as well as tax decisions regarding accessories of the tax receivables) can be triggered at any time, without restrictions for the fiscal body, and the taxpayer, in his capacity as fiscal debtor, can lose even the right to be heard.

Fourth, the taxpayer's hearing is considered to be completed in the following situations:

- the taxpayer explicitly refuses to appear at the deadline set by the fiscal body for the hearing;
- the taxpayer does not appear, for any reason, to two consecutive deadlines set by the fiscal body for the hearing.

Fifthly, the exception of the absence of the hearing can be invoked by the taxpayer with the formulation of the appeal registered according to the provisions regarding the fiscal litigation. However, it is quite difficult to prove that the right to be heard has not been respected, as long as the tax body is not obliged to consult the taxpayer regarding the date and time of the hearings. In order to ensure some equality of weapons between the subjects involved in a tax procedure, we believe

that it would have been appropriate to regulate a consultation procedure between the parties in which the taxpayer has the opportunity to demonstrate and prove the situations in which he is, a real and objective impossibility to exercise its right to be heard. Such legal provisions would be able to qualitatively improve the relationship between the tax payer and tax authorities and would also create real conditions of application for the principle of cooperation between the two subjects in the fiscal procedure.

7) The obligation to cooperate should be a principle that governs the relations of the taxpayers with the tax authorities. As it is formulated by the legislator, it is in fact the exclusive obligation of the taxpayers to support the fiscal bodies in determining the fiscal factual state, both by presenting the facts known by him and by indicating the means of proof that are known to him. According to the legislator, the taxpayer is obliged to take the measures to obtain the necessary means of proof, using all the possibilities available to him.²⁴ In the sense of the above mentioned, we observe that this principle is established as a unilateral obligation of the taxpayer to the fiscal body, without any reference to the idea of reciprocity. Such a legal provision reveals the concern of the sole legislator to improve the behavior of the taxpayer in the fiscal procedure, totally ignoring the criticisms brought by them to the abusive behavior of the fiscal body, often proved in the field of fiscal law.

8) Keeping the fiscal secret²⁵ is a principle that concerns both civil servants within the fiscal body and those who no longer hold this quality. They should all keep secret the information they hold as a result of exercising their duties.²⁶ The law also regulates exceptions to this rule. Thus, information regarding taxes, contributions and other amounts due to the general consolidated budget can be transmitted:

- to the public authorities, in order to fulfill the obligations stipulated by the law, that is, in order to establish and collect public budgetary receivables;
- to tax authorities of other countries, under conditions of reciprocity established by conventions;
- to the competent judicial authorities;
- to any applicant, with the written consent of the taxpayer / payer about whom information was requested. By written agreement it is understood that the agreement is issued either on paper or in electronic form, expressed in accordance with the law;
- in other cases expressly provided by special laws.

²⁴ Art. 10 of Fiscal Procedure Code.

²⁵ Art. 11 of Fiscal Procedure Code.

²⁶ In the category of information as those considered to be a fiscal secret, are the data regarding the identity of the taxpayers, the nature and amount of the tax obligations, the nature, the source and the amount of the debtor's income, payments, accounts, turnover, cash transfers, balances, receipts, deductions, credits, debts, the value of the net patrimony or any kind of information obtained from declarations or documents presented by the taxpayers or any other information known by the fiscal body as a result of exercising the duties of the service.

The Tax Procedure Code contains at least a bizarre stipulation regarding tax secrecy. Thus, it is stipulated that the provision of information is allowed, even outside the exceptions stipulated above, if the identity of a natural or legal person does not arise from these.²⁷

First, we consider that such regulation again undermines the fundamental principles on which the rule of keeping fiscal secrecy is based and the reasons for which they are considered necessary in the practice of fiscal law in developed democratic states.

Secondly, professional secrecy and fiscal secrecy aim at protecting the financial and commercial interests of taxpayers who are on the market in competitive relationships that sometimes reveal a fierce struggle for raw materials, suppliers, customers, technology or other elements that can influence economic and financial efficiency of some natural persons, but especially legal ones. Given the fact that tax officials can enter, when administering tax receivables of taxpayers, in possession of information whose disclosure could cause competitive distortions or other damages to taxpayers, we consider that, on the contrary, the legislator should have been more rigorous in regulating these aspects regarding professional secrecy in general and fiscal secrecy in particular.

Third, a careful analysis of all these exceptions can lead us to the conclusion that the rule of fiscal secrecy enjoys such a rare applicability that it risks to become an exception, in relation to the exceptions, which, being so numerous, can become, by summing up the situations in which they apply, rules.

In this context, it is not without interest the stipulation that the provision of tax information is allowed to the taxpayer himself or, respectively, his successors.²⁸ We find such a clarification important, because in its absence the absurd situation could occur that, the rule of fiscal secrecy opposes just to the taxpayer, although this principle is thought by the legislator in order to protect him. Those called to apply the law do not always understand it in its spirit, namely that the beneficiary of this principle is the taxpayer himself, so that situations can appear so that a legal text meant to protect them, in fact, creates difficulties for them.

On the other hand, the fact that even the successors of the taxpayer are exempted from the rule of fiscal secrecy can be regarded as a way to prolong the protection of the taxpayer's financial interests, but this regulation can also be seen as an extension of the number of exceptions to the rule of keeping the fiscal secret, which only reinforces the fear expressed above, that there is a real risk that the rule becomes an exception, and the exceptions, by their high number, will take the place of the rule, in the practice of fiscal bodies.

9) Good faith in the relations between the taxpayer and the fiscal body is a fundamental principle for the correct application of the legal provisions.

²⁷ Art. 11 paragraph (7) of Fiscal Procedure Code.

²⁸ Art. 11 paragraph (5) of Fiscal Procedure Code.

The issue of good faith must be approached from two perspectives. On the one hand, it must characterize both the interpretation and the application of the tax law, and on the other hand, it must equally encourage the taxpayers, but especially the tax authorities. The taxpayer must fulfill his obligations and exercise his rights according to the purpose for which they were recognized by the law and correctly declare the data and information regarding the due fiscal obligations. In turn, the fiscal body must respect the rights of the taxpayer in each procedure for managing the tax receivables in progress.²⁹ It is the only circumstance in which the legislator also refers to the taxpayer's rights in the fiscal procedure, especially since these rights are eminently procedural in nature meant to protect him from any excesses of the fiscal body.

From this point of view, we consider that the issue of sanctions applicable in the exercise of the rights that the law guarantees to both parties of the fiscal legal report, both materially and procedurally, is raised above the internal limits of these rights (Deleanu, 1988)³⁰. A welcome explanation brought by the current form of the Fiscal Procedure Code refers to the fact that the good faith of the taxpayers is presumed until the fiscal body proves otherwise. This legal presumption is extremely important especially in situations when the legislator sanctions the bad faith of the taxpayer.³¹

Conclusions

We note that, the relatively recent changes to the fiscal procedural legislation, do not bring the improvements that we expected and that we consider necessary in a democratic society. The fiscal legislator remains dependent on an outdated mentality that the fiscal body, in its capacity as "master", is allowed anything, under the justification of "the public interest in making and collecting public funds". We also consider that the establishment of a legal procedure has a dual purpose, namely the establishment of the rules after which the debtor of the obligation has to pay tasks, but also the establishment of rules and instruments of constraint, allowed and especially not allowed to the creditor (the beneficiary) of the obligation, so that the risk of his abusive behavior should be kept to a minimum.

Unfortunately, the tax legislator does not prove "inspired" in trying to turn efficient the activity of collecting fiscal and budgetary debts towards public funds. On the contrary, the new legislative changes allow and even encourage the abusive behavior of tax bodies that in practice is less and less tolerated and increasingly challenged by taxpayers. In front of these realities, the taxpayer can only defend himself before the tax

²⁹ Art. 12 paragraphs (2) and (3) of Fiscal Procedure Code.

³⁰ To see the issue of abuse of law in civil procedural law.

³¹ For instance, in the matter of the joint responsibility of the company administrator with its tax receivables, if the administrator acted in bad faith in order to prevent the company from honoring its tax claims.

litigation courts, but they still remain shy and hesitant in fulfilling their role in regulating the balance between the two sides of the tax procedure, and “equality of weapons in the fiscal procedure ” still remains just a wish.

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