

PRACTICAL MEANINGS OF THE INCIDENCE OF THE ADMINISTRATIVE AND TAX RULES, RELATING TO THE PAYMENT OF THE ANNUAL CAR'S TAX

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Abstract

Applicability of administrative regulations, in correlation with the incidence of tax rules, gave birth to custom situations, which, in addition to the one created in the understanding and the wrong interpretation of the text of the law generated the application of the force of compulsion of the State. The *present* work is not focused only on a theoretical analysis of texts of law incidents, but especially is based on practical comments considering the action filed in the Administrative Court by a person who was considered damaged by the administrative authority.

Keywords: *administrative authority, fiscal provisions, taxes, car*

1. Introduction

Taxes are a form of sampling of a part of the revenues, of the fortune of the natural and legal persons made available to the state, for covering public expenditure. This sampling should be done in a mandatory, with irredeemable title and without any contra-performance from the state, being esteemed the principle of the tax equity. The most important sources of budgetary revenues are taxes and fees. Income tax is a required and irredeemable subscription, due, according to the law, to the state budget by natural or legal persons, for the revenue which they obtain or goods which they hold. Taxes and fees are set by the state through its authorities, depending on the skills which they hold, regardless of the fact that we make reference to central authorities or at local level¹.

The tax payer is the natural or legal person who is required by law to pay tax, being the person who supports actual payment of the indebtedness. The aim of taxable income, is represented by the revenues made by taxpayer, the wealth held by taxpayer, and in our case, the car which is chargeable. The source of the tax tells us of what is to be paid tax, of income or of fortune. Revenues, as the source of the charge, may take several forms, for example remuneration, profit, equities.

The unit of measurement in which is expressed the size of taxable material for quantification represents the unit of assessment. For example, for the income tax, the unit of assessment is the circulating medium, and for building tax the unit is the square meter for net area. The assessment tax is represented by the related tax of

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¹ Fiscal authorities identify and judges taxable material and determines the amount of tax due to state.

assessment unit. The tranche of assessment can be fixed (when related tax enforcement unit appears as an unchanging size, expressed in percentage or absolute sizes) expressed as relative sizes.²

Time limits by which the payment must be made, and as a rule, they are different in relation to the size and frequency of income tax. They are taxes which are takings daily, others are received at regular periods (monthly, quarterly, semestral, yearly). The car tax shall be paid annually in two equal installments, until 31 March and 30 September.

2. The car's tax

The car's tax is a contribution based on money, natural and legal persons are obliged to participate, respecting some rules, at the formation of general funds for the development of the society, which are necessary for the benefits of all the community. The car's tax is an absolute contribution, all the natural and legal persons who are the customers of actions and objectives financed from public funds, are obliged to participate to the formation of these funds. This obligation is laid down in the Constitution of Romania, in article 56, alin. 1 of chapter III, fundamental duties for citizens.

Car's tax has character non-refundable, the state is not obliged to repay to taxpayers the amounts levied under this title. Once the general funds of the society are formed, they should only be used for the financing of actions and objectives of general interest, necessary for all members of society. Such amounts are collected on the taxable object, but they return in one way or another by members of society.

Of course car taxes due under legal rules, because there are not taxes of the state which can't be perceived only in accordance with the text of the law.³ Required payment of taxes returns to natural and legal persons who have the status of tax payers. In accordance with Article 56, paragraph 1 of the Constitution, citizens have the obligation to contribute to public expenses by taxes and fees.

Car's tax is due for auto possession owned by the taxpayer. This feature is closely linked to the legality of the tax, because they are subject of taxation only those income and goods of the taxpayer which, according to the law, are taxed; „per a contrario” it's illegal the taxation of goods or incomes which are not set out in the regulatory acts which are establishing such obligations. Improper levying taxes attracts the refund to taxpayers as soon as possible, and civil servants guilty will respond, as appropriate, disciplinary, administrative or criminal law.

In accordance with Article 261, chapter 4 of Fiscal Code, any means of transport that is the property of a person shall entail payment of an annual tax, excepting the

² The imposition of proportional odds, the share is constant, and the tax increases proportionally with the increase of the taxable material. Imposing proportionate is often criticized because it maintains the same fiscal pressure on all taxpayers, barring their contributory capacity.

³ In the case of article 139, paragraph 1 of the Constitution, taxes, duties and any other revenue of the state budget and State social security budget shall be established only by law, and in accordance with article 139, al. 2 Local taxes and duties shall be established by the local or county councils, within the limits and under the conditions law.

means of transport statutoried in Article 262, alin. 1, 2 and 5 of Fiscal Code. The estimation of tax on means of transport shall be based⁴ on the engine capacity, by multiplying each group of 200 cmc or fraction thereof the amount corresponding to each group.

In the case of means of transport which is disposed of by a person in the course of a year, or shall be removed from the tax records of the division of authority of local public administration, the tax of means of transport stops being paid by that person, from the date of the first of the month following that in which the means of transport has been disposed of or removed from tax records. Any person who acquires, disposes of a means of transport or changes his or her domicile is requires to submit a tax declaration regarding the means of transport owned, at the specialized section of the local public administration authority on the domicile within 30 days, including, from the time of modification⁵.

3. Practical aspects concerning the auto tax charged by the local administrative authority

V.N., the owner of car brand ARO has tried not to pay the tax due for the property that he hold, for the year 2012, 2013 and 2014 in the first half. The argument of the owner was that the car for which he has to pay was removed from circulation and he uses it effectively just as cage for hens in the household. So, he initiated a draft resolution for the Local Council Alba Iulia, a project calling for exemption from payment of income tax, in accordance with the foregoing.

The Local Council of Alba Iulia, in public meeting of July 26, 2013 aims to reject the project, which is why the car taxable owner has filed an appeal to the Administrative Court.

In January 2014, the Tribunal decided to dismiss the action made by claimer V. N. against the Local Council of Alba Iulia. V. N. is the owner of the means of transport brand ARO, which was registered in Romania, and the motor tax is due by him in the quality of the ownership of the car in question. The proof of the quality of ownership of the claimer results from the contract of sale and purchase no.1762/30.03.1984, the declaration for the establishment of tax and insurance premiums on the car no. 2275/02.04.1984 concluded between V. N. and the Popular Council of Municipality of Alba Iulia and the Identity Card of the ARO.

In the civil action filed, the plaintiff argues that he does not due any car tax for the means of transport brand ARO which he holds in the property, because it has been removed from police records because of the advanced ageing of the vehicle. It's old (30 years old), the car was manufactured in 1984, is damaged due to missing parts, making it unsuitable for the performance of the functions for which it was created.

Concerning the sustaining of the plaintiff according which the means of transport it's old and it has missing parts being decommissioned should be considered title IX

⁴ Art. 263 of Fiscal Code.

⁵ In the case of means of transport provided in article 263, paragraph 2 of Fiscal Code with additions and subsequent amendments, the tax shall be calculated on the basis of its capacity, by multiplying each group of 200 cm³ or fraction thereof by the amount corresponding provided for legal.

section 122, alin. 3 of HG no. 44/2004⁶. From this it follows that the legal provision for the means of transport is due to the tax period in which the current is in repair, overhaul or it's not used for any other reason, including lack of spare parts trade network or specialized facilities. This legal is also applies in the present situation, which is why mr. V. N. due motor tax for the means of transport concerned. It is true that currently the brand Aro means of transport shall be removed from circulation, but was registered in circulation, thus making the subject of matriculation and tax object.

The fact that it was removed from circulation does not result termination of the tax and tax reduction, which was revealed by the Court of Appeal Alba Iulia by Decision no. 7879/19.11.2012.

If the owner of the vehicle wants to stop due to the motor tax for this means of transport must transfer the ownership of the transport through any of the means required by law or to submit a document showing that the means of transport was scrapped under the terms of OG no. 82/2000 concerning the authorization of economic operators carrying the repair activities adjusters, constructive changes, reconstruction of road vehicles and the dismantling of used vehicles.

Therefore, you may find too obstructionist the attitude of the claimer who, despite all the legal solutions that fiscal institution gave him in order to be able to have the tax records of the means of transport concerned, unduly refuses to comply without to pay the motor tax which he due for this vehicle.

In accordance with the previsions of the Article 125, alin. 2, letter „e” of GO no. 92/2003 regarding the fiscal procedure code republished with amended and supplemented „ *at the duly substantiated request of debtors, individuals and companies for state local lenders through local government authorities who administer these budgets can be granted for outstanding budgetary obligations it manages the following exemptions from payment: e) exemptions or reductions of taxes and local taxes, in accordance with the law.*”

This statutory provision leaves it to local councils, granting tax breaks like the asked by the complainant. The city Council it's sovereign in assessing whether or not to grant such a succor to the payment. Considerations on which it is considering of opportunity, and in the present case, it has been decided that it is neither legal nor advisable to grant the reliefs. Therefore, it's a responsibility of the local Council. The ruling, the City Council of the Municipality of Alba Iulia decided not to pay such a tax feature of the plaintiff. We believe that event the Court cannot break the will of the local Council of Municipality of Alba Iulia and have the facility to grant tax requested by the complainant.

Regarding the Fiscal Code, as amended and supplemented, the establishment, the control, tracking and collection of tax on means of transport shall be carried aut by the specialized section of the local public administration authorities at the commune level, the city of the Municipality of Bucharest sector, the appropriate range of skills is a domicile, seat or the working point of the taxpayer.

In the event that a taxpayer is not satisfied with the method of calculating the tax, can make opposition, pursuant to article. 205-218 of GO no. 92/2003 regarding

⁶ According to these provisions tax on provisions tax on the means of transport shall be given to decrease for the period in which it is located in current repairs, major repairs or are not used for any other reason, including lack of some spare parts from commercial network or from the joint planning activities profile repair.

the fiscal procedure Code as amended and supplemented. Is such an opposition is filed it will be resolved by the Mayor and territorial administrative part. Order issued by the Mayor may be contested in the administrative court according to the Law no. 554/2004⁷ as amended and supplemented.

The Court of Appeal held, inter alia, that it is immaterial that the appellant proceeded to deregistration of the vehicle in movement. The movement is not an operation that lead to the extinction of the obligation to pay tax on auto, but the tax records, and the movement does not result in termination of tax records. Therefore, one can conclude that the complainant has all current administrative and judicial remedies provided by law.

The procedure for appeals on the way down the car tax is strictly regulated by the Code of fiscal procedure and local councils do have no powers in regard to this procedure. Material competence for determining and finding a car tax have specialized departments of the local public administration authorities, mayors and possibly court where administrative-tax are subject to administrative law.

According to Article 261, al. 1 of Law no. 571/2003, regarding the Fiscal Code, as amended and supplemented „*any person who owns a means of transport that must be registered, recorded in Romania due to an annual tax for the means of transport, except that in this chapter otherwise provided*”⁸

Also, according to the provisions of title IX, pct. 94 alin. 1 of HG no. 44/2004, approving the methodological Norms for the application of the Fiscal Code, with subsequent amended and supplemented „*taxpayers who hold ownership of the means of transport must be registered in Romania owes tax on means of transport in accordance with Title IX of Fiscal Code*”⁹.

4. Conclusion

All texts of the abovementioned law establish that a natural or a legal person who holds ownership of the means of transport to be registered, due to the yearly tax for the means of transport in question. The exceptions to this rule are provided by Fiscal Code. Car tax is a direct tax which is payable by the owner for the means of transport that he has in his property. Termination of service of the car does not result in termination of the obligation of payment of the fee for cars, but the raying from the tax records. Legal arrangements must be completed in full, otherwise the fiscal obligation shall remain valid and the car tax charged by the administrative authority is legitimate.

⁷ Law no. 554/2004 on administrative litigation.

⁸ In paragraph no. 2 of the same article provides that this tax is to be paid to the local budget of territorial-administrative unit where the person resides, office or place of business.

⁹ In the paragraph 2 of article 94 shall be point mentions that “the expression means of transport to be registered, as referred to in art.261, paragraph 1 of Fiscal code, means that any means of transport, owned by a natural person or a legal person, and who, according to the law, shall be the subject of registration”.