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ABOUT TAXATION: TAX INCENTIVES VS TAX AMNESTY

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Abstract

In the current period, the question arises of the appropriateness of the fiscal amnesty approved by the governors. To be able to answer, we consider it useful to understand the legal framework of this mechanism, its advantages and disadvantages, the risks it could induce. We will also analyze, by comparison, the concept of tax incentives, drawing the differences between the two notions. However, we must remember that both measures are decided by the governors in order to support taxpayers, differentiating themselves through their own application mechanisms.

Key words: tax amnesty, tax incentives, legal framework, national and international context.

INTRODUCTION

The current national and international context, of the various crises faced by the economy, have imposed an adaptation of the fiscal policy through a diversification of measures and instruments with the help of which the state can maintain the macroeconomic stability of Romania. Also, the complexity of the changes and challenges that the state, on the one hand, and the taxpayer, on the other, must face, also require a strategy to ensure the strengthening of relations between the two. In conditions of fragility of the internal economic environment (even external), but implicitly, of certain categories of "vulnerable" natural persons, the Government must promote a prudent fiscal policy with the aim of managing budget resources and obligations as best as possible.

The measures that are taken in the fiscal space must be sustainable, aim at improving and simplifying fiscal legislation, revising fiscal facilities, all these actions also based on dialogue with the business environment.

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I. LEGAL FRAMEWORK

The seat of the matter in terms of payment facilities and the method of extinguishing fiscal obligations (including extinguishment by canceling the fiscal obligation) is represented by the Fiscal Procedure Code¹. The Romanian legislator must continue to improve the fiscal procedural legislation in order to correspond to the principles of transparency, stability, predictability. Payment facilitation or possible tax amnesty measures will be aimed at discouraging tax avoidance practices, thus guaranteeing a fair taxation of taxpayers.

II. ACTUAL STATE

The Fiscal Procedure Code establishes the possibility for the central or local fiscal body to grant payment facilities in the form of payment installments. These deferrals are frequently approved in the form of delays in the payment of penalties etc. Borrowers who face financial difficulties, but meet the legal conditions for granting them, can benefit from these facilities. Such a measure, which involves the payment of outstanding tax obligations in installments, presents advantages both for the state, as a creditor, and for the debtor taxpayer (the state registers a better collection of budget revenues, with a lower financial effort than the costs of execution enforcement of budgetary claims; the taxpayer receives a useful lever in the recovery process in case of temporary financial difficulties).

The facilitation in the form of the stagger provided by the legal norms in force, can be requested by any debtor (legal person, natural person, associations without legal personality²).

The payment installments granted by the central fiscal body present certain features, aspects that aim at the scope of the installment; the assimilation, for the purpose of scheduling, of some obligations as fiscal obligations (such as those of the nature of fines administered by the fiscal authority, budget receivables related to contractual legal relationships established by court decisions etc.). There are certain categories of fiscal obligations, expressly and limitedly provided by the law, for which payment installments are not granted (for example, the case of fiscal obligations with a total value below 500 lei in the case of natural persons, respectively 2,000 lei in the case of associations without legal personality and 5,000 lei in the case of legal entities³). Rules are also stipulated regarding the staggered period, and the fiscal body will individualize this period taking into account the amount of the fiscal obligation and the debtor's financial ability to pay

¹ Law no. 207/2015 Fiscal Procedure Code published in the Official Gazette of Romania no. 547/23.07.2015. See Art. 22, Art. 184 et seq.

² Regarding associations without legal personality, the conditions to benefit from the staggered measure are those specific to legal persons (art. 184 paragraph 2 of the Fiscal Procedure Code).

³ See Art. 184 para. 7 of the Fiscal Procedure Code.

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(it should be noted that, in assessing this staggered period, the competent body is required not to approve a repayment period longer than requested).

As we have already shown, the legal regime of the payment facilities that can be granted by the local fiscal body is contained in art. 185, of the Fiscal Procedure Code. We must mention that it was necessary to establish the possibility of granting such facilities also for fiscal claims administered by local fiscal bodies and not only for those administered by the central fiscal body, because this measure ensures the equality of rights of citizens before the law and public authority, without privileges and discrimination⁴. The deferment is granted only at the express and well-justified request of the taxpayer facing financial difficulties. This debtor, although it performs or has the possibility to perform its due obligations, has a low degree of short-term liquidity and may, in addition, record a high degree of indebtedness. These factors may prejudice the fulfillment of obligations by the debtor. In addition, we can note that the taxpayer whose managerial and economic viability potential shows a downward trend, but who executes or is able to execute the required obligations, is in difficulty. The actual procedure for granting payment facilities at this level is approved by decision of the deliberative assistance at the local level.

We can conclude in this first part that the tax relief represents those facilities granted by the competent tax authorities with the aim of helping taxpayers to pay their tax obligations, the specific actions consisting in the rescheduling of debts, the reduction of tax rates, the granting of temporary exemptions etc. Also, tax incentives are aimed at facilitating voluntary tax compliance and supporting taxpayers who have difficulties in fulfilling their tax obligations (by reducing the tax burden. Tax incentives can also be granted in the long term, being applied as permanent measures also to stimulate tax compliance or to support certain sectors of activity or certain categories of taxpayers in financial difficulty.

Cancellation, as a specific way of extinguishing the tax liability, used only exceptionally, also reflects the state's policy towards taxpayers. Thus, two categories of acts of cancellation of fiscal obligations can be identified, respectively: acts with general applicability and those with individual applicability (*Postolache Rada, 2009, p.226*). The legal framework regarding acts with individual applicability is represented by art. 266 of the Fiscal Procedure Code, the legislator establishing the cases in which the cancellation can be ordered with the approval of the enforcement body (for example, when the enforcement expenses, exclusive of those regarding communication by mail, are higher than the tax receivables subject to enforcement; in in the case of outstanding fiscal claims administered by the central fiscal body, outstanding on December 31 of the year, with a value below 40 lei etc.). The deliberative authorities (by decision of

⁴ Art. 16 of the Romanian Constitution.

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the local Council) will be able to establish, for the fiscal claims administered by the local fiscal body, the ceiling of the fiscal claims that can be cancelled, without exceeding the previously stipulated maximum limit⁵.

Fiscal annulment, analyzed as another way of extinguishing fiscal claims, consists in the creditor's renunciation of the collection of some claims (either considering the impossibility of recovering them, or the inefficiency of collection in certain situations provided for by law). Taking into account these aspects, we could state that the cancellation has the legal nature of "debt forgiveness" (debt remission) regulated by the Civil Code⁶ (*Lazăr Ioan, Florea Bogdan, 2023, p.541*). There are also contrary opinions that state that, although the effect of the cancellation is the exemption from the payment of the obligation, this modality does not have the meaning of debt remission in the Civil Code (*Morozan Florina, 2014, p.32*). The two procedures for extinguishing obligations have different legal bases, specific conditions of application⁷ (for example, in the case of cancellation, its granting is not left to the free, discretionary assessment of the fiscal body) (*Postolache Rada, op.cit., p.227*).

Through the norms of a general nature, respectively through the normative acts with general applicability aimed at a wide category of taxpayers, the extinguishment of the fiscal obligation can be ordered, in this formula we are in the presence of a fiscal amnesty. Through the tax amnesty, the budgetary obligations owed to the debtors are extinguished by the effects of some normative acts (for example, the situation of the amnesty applied to the sums improperly collected as a pension, social allowance for pensioners and companion allowances⁸). Thus, in order to mitigate the negative effects of the recovery of these amounts from the beneficiaries, the exemption from the payment of these debts was ordered by law. It should be noted that in this situation we cannot hold the fault of the beneficiaries, the errors belonging exclusively to the social insurance system, errors in the interpretation of the law, respectively errors of the IT processing system data).

We can see that the tax amnesty measure is an act of "lenience" that must be resorted to with caution, through clear and precise legal provisions only in special social-economic conditions or in situations of natural calamities, state of necessity, avoiding abuses and ensuring the correct applicability of the amnesty. We should not forget that caution is also justified because the final effect of the amnesty is the definitive reduction of outstanding debts from the records of the state's fiscal bodies.

⁵ The threshold of 40 lei, according to art. 266 para. 5 and 6 of the Fiscal Procedure Code

⁶ Art. 1629-1633 of the Civil Code

⁷ Moreover, the different application conditions are also reflected in the value dimensioning of the annulment measure, in justification, etc.

⁸ https://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=21821 accessed on 01.11.2024, 3 p.m.

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The tax amnesty has advantages, but it is also sometimes contested for the risks it entails. These risks materialize, for example: in the taxpayer's tendency to postpone the payment of tax obligations in the hope of adopting a legislative act of amnesty; in the possibility of the state losing tax revenues (in the short term, the level of budget receipts may increase, but, in the long term, through the previously mentioned attitude of the taxpayer, to wait for new and new amnesty acts, revenues may be lost). Also, a problem is raised by the possible inequity generated by the tax amnesty, between the taxpayer in good faith, who pays his tax obligations on time and in the legal amount, and the one who "avoided" paying them on time, being somehow "rewarded" by reducing the accessories or, in part, even the taxes due.

We must also bring up the year 2024 when, through the adoption of Emergency Ordinance no. 107⁹, the issue of the advantages and disadvantages of the tax amnesty was brought back into focus. The government justified this action on the grounds of prudent management of budget revenues, especially in the context of the initiation of the excessive deficit procedure. Measures had to be found to facilitate a better collection of revenues to the state budget, given the trend of slowing economic growth. The governors argued that, although the question of the fairness and morality of such a measure sometimes arose, under the given conditions amnesty was necessary. The representatives of the business environment, of those taxpayers who execute their budget obligations in good faith and on time, consider this legal measure as generating moral risk, characterized by a tendency to assume unjustified risks that also involve the bearing of costs by third parties who assume all or part of these risks.

The amnesty aimed to erase the accessories related to the debts of natural and legal persons, who pay their main debt by November 25 of the current year¹⁰. There are opinions according to which the current amnesty will only have the effect of collecting some amounts to the budget, but it has no long-term vision. These amnesty measures should be substantiated by some impact studies and be followed by voluntary compliance measures. Along with voices from the business environment that criticized the measure of the recent tax amnesty, the Council of Foreign Investors¹¹ from Romania was also heard, which called for a much too quick approval of the measure, without any specific analysis and without the formulation of points of view by the environment of business. It is considered that

⁹ Government Emergency Ordinance no. 107/2024 published in the Official Gazette of Romania no. 905/06.09.2024

¹⁰ It is necessary to specify that following the notifications made by the unions of Finance workers, which showed that it was impossible to process all the requests of taxpayers with debts by November 25, it was decided to extend the initial deadline. Thus, in order to honor all the requests of interested taxpayers (about 100,000 requests) for this measure, a new deadline was set, namely December 20, 2024.

¹¹ <https://fic.ro/> accessed on 08.11.2024, 4 p.m.

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prudence must prevail in the decision to grant tax amnesties. The behavior of taxpayers who have benefited from the amnesty measure will be monitored, but in the following period they do not show a compliant behavior of paying taxes and submit an amnesty request when the governors adopt a new such debt cancellation measure. Moreover, some experts believe that the amnesty measure and its effects should be revocable for these taxpayers.

CONCLUSION

Both payment facilitation and tax amnesties will continue to be popular methods and available to governments in their efforts to improve the collection of budget revenues, but also to prevent or at least reduce tax evasion. Although both measures support taxpayers, they differ in certain features, through the implementation mechanism. Thus, the amnesty can be analyzed as a temporary measure, which takes into account debts or undeclared income from the past. On the other hand, the tax reliefs are measures that are applied for the future, in the long term.

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