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## APPEAL PROCEDURE OF FISCAL ADMINISTRATIVE ACTS. THE MANDATORY PRELIMINARY APPEAL PROCEDURE

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### **Abstract**

*In a period in which are being organized more and more often control campaigns of the National Agency for Fiscal Administration (A.N.A.F.), with the aim of improving voluntary compliance and achieving the specific objectives of the agency, that of preventing and combating fraud and tax evasion, we believe that emphasis must be also placed on the rights of the taxpayer to ensure a balance between the general interest and the legitimate expectations of the individual, in a relationship based on good faith and compliance with the law.*

*Contemporary reality proves us that even in this field we are still facing some “disorder” inherited or perpetuated from the complex of circumstances and difficulties through which the set of institutions and bodies with duties of carrying out the financial and fiscal policy of the state went through (thus including, here, and similar dispute resolution structures).*

**Key words:** *appeal, tax administration, administrative appeal;*

### **INTRODUCTION**

In the current period in which the “tax administration that simplifies our lives”<sup>1</sup> is always brought up, it is important to see what is the role and efficiency of the disputes resolving structures in fiscal matters, respectively, how this procedure is carried out.

In the economic and social context of these years marked by crisis, the leading factors must understand that in order to improve the relations between taxpayers and inspection bodies, the measures should be designed to ensure good governance, responsibility in the management of taxpayers’ rights. Taxpayers are

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<sup>1</sup>Furthermore

[https://static.anaf.ro/static/10/Anaf/AsistentContribuabili\\_r/CARTA\\_CONTRIBUABILULUI\\_10\\_032010.pdf](https://static.anaf.ro/static/10/Anaf/AsistentContribuabili_r/CARTA_CONTRIBUABILULUI_10_032010.pdf) - site accessed on 02.08.2022, 17.00 o'clock.

often “disappointed and consider themselves aggrieved by the way in which taxation decisions or tax inspection reports are substantiated” (Bufan Radu, Svidchi Nadia, 2021, p.17) and in addition, they do not trust the exercise and finality of the preliminary procedure administrative when they were injured in their rights by a fiscal administrative act.

## 1. CONTESTING ADMINISTRATIVE-FISCAL ACTS. GENERAL CONSIDERATIONS

Beginning from the importance of such a prior procedure, sometimes it is necessary to sound the alarm on the negative effects, the distortions that can be generated by the inefficiency of the authorities through which it is carried out, effects consisting of: disruptions in the taxpayer’s activity (for example, when when the tax inspection is ordered to be restored), diminishing taxpayers’ trust in the efficiency, integrity, authority, impartiality of the tax administration.

In *Carta Contribuabilului (The Taxpayer’s Charter)*<sup>2</sup>, the tax administration presents itself as an authority that “respects the person and his rights” and reiterates the possibility of contesting his position expressed in the fiscal administrative acts: “You can contest our position. To exercise your rights, we facilitate to you the comprehension of our decisions ... The motivation must be based on the regulations, but also on the thorough and clear analysis of the circumstances of the case. ... In principle, unnecessary litigation must be avoided”<sup>3</sup>. Starting from these rules, through our approach we aim to see how and how much of these wishes are respected in practice, trying to sensitize and encourage the authorities, professionals interested in preventing and eliminating vulnerabilities in this activity.

In order to deepen the topic, we also begin from the historiography of the issue from the point of view of regulatory evolution<sup>4</sup>.

In the evolution of the Romanian legislation on the matter, the period of 1997-2001 holds our attention, in which two types of appeals were regulated against the documents issued by the bodies of the Ministry of Finance. Thus, the person who considered him/herself injured in his right or in a legitimate interest, by a fiscal administrative act issued by the competent fiscal bodies, had open, on the one hand, the administrative avenues of appeal, being able to advance in this meaning objections, appeals and complaints<sup>5</sup>, respectively the judicial ways<sup>6</sup>. The

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<sup>2</sup>[https://static.anaf.ro/static/10/Anaf/AsistentaContribuabilului/CARTA\\_CONTRIBUABILULUI\\_10032010.pdf](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabilului/CARTA_CONTRIBUABILULUI_10032010.pdf) , site accessed on 10.08.2022, 19.00 o'clock.

<sup>3</sup>*Ibidem.*

<sup>4</sup> FURTHERMORE THE LAW NO. 661/1923 FOR THE UNIFICATION OF DIRECT CONTRIBUTIONS AND FOR THE ESTABLISHMENT OF THE GLOBAL INCOME TAX PUBLISHED IN OFFICIAL GAZETTE (MONITORUL OFICIAL) NO. 253/23.02.1923.

<sup>5</sup>Art. 1-6 (preliminary administrative ways) from Law no. 105/1997 for the settlement of objections, appeals and complaints on the amounts ascertained and applied through the control or

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Constitutional Court was referred to various exceptions of unconstitutionality of the provisions of Law no. 105/1997<sup>7</sup>, for our research, being relevant the following decisions: Decision no. 178/1999<sup>8</sup> and Decision no. 208/2000<sup>9</sup>.

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imposition acts of the bodies of the Ministry of Finance, published in Official Gazette (Monitorul Oficial) no. 136/30.06.1997.

<sup>6</sup>Art. 9 f the Law no. 105/1997 according to which: “An action can be taken against the decision of the Ministry of Finance, within 15 days from the notification of the decision, at the court provided for in the special law on the establishment of disputed taxes and fees. In the situation where the special law does not specify the court’s competence to resolves the action, it will be referred for resolution to the court of appeal in whose territorial jurisdiction the petitioner has its seat or domicile, as the case may be. Against the sentence of the court of appeal or the district court, an appeal can be made to the Supreme Court of Justice or the tribunal, as the case may be, within 15 days of communication”.

<sup>7</sup>D.C.C. no. 134 of 20th October 1998 published in the Official Gazette no. 57/09.02.1999; D.C.C. no. 173 of 10th December 1998 published in the Official Gazette no. 35/28.01.1999; D.C.C. no. 50 of 23rd March 1999 published in the Official Gazette no. 308/30.06.1999; D.C.C. no. 48 of 23rd March 1999 published in the Official Gazette no. 323/06.07.1999; D.C.C. no. 58 of 13th April 1999 published in the Official Gazette no. 308/30.06.1999; D.C.C. no. 181 of 16th November 1999 published in the Official Gazette no. 3/07.01.2000; D.C.C. no. 84 of 4th May 2000 published in the Official Gazette no. 367/08.08.2000; D.C.C. no. 22 of 23rd January 2001 published in the Official Gazette no. 109/05.03.2001; D.C.C. no. 77 of 6th March 2001 publicată în M. Of. nr. published in the Official Gazette no. 235/09.05.2001; D.C.C. no. 114 of 24th April 2001 published in the Official Gazette no. 293/04.06.2001; D.C.C. no. 116 of 24th April 2001 published in the Official Gazette no. 320/14.06.2001.

<sup>8</sup> D.C.C. no. 178 of 16 November 1999 published in the Official Gazette no. 267/14.06.2000. Although the Court, with a majority of votes, rejected the exception formulated in relation to art. 2-8 of Law no. 105/1997, the President of the Court formulated a separate opinion considered “based on the interpretation of the constitutional provisions in the light of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights”. The reasoning in this separate opinion also represented the basis for D.C.C. no. 208/2000. The President of the Constitutional Court considered that the provisions of art. 2-5 of Law no. 105/1997 were unconstitutional, because the procedure regulated by law did not allow the resolution, within a reasonable time, of the cases related to the objections, appeals or complaints on the amounts ascertained and applied through the control acts of the bodies of the Ministry of Finance. Thus: “In the light of the provisions of art. 11 [according to which] (1) The Romanian State undertakes to fulfill exactly and in good faith the obligations deriving from the treaties to which it is a party. (2) The treaties ratified by the Parliament, according to the law, are part of the internal law”.] and the provisions of art. 20 para. (2) of the Constitution (according to which “If there are inconsistencies between the pacts and treaties regarding fundamental human rights, to which Romania is a party, and the internal laws, the international regulations have priority”), the provisions of art. 2-5 of Law no. 105/1997 contravene the provisions of art. 6 paragraph 1, first sentence of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which: “Every person has the right to a fair trial, in public and within a reasonable time, by an independent court and impartial, established by law, which will decide either on the violation of his rights and obligations of a civil nature, or on the merits of any accusation in criminal matters directed against him. [...]”.

<sup>9</sup> D.C.C. no. 208 of 25th October 2000 published in the Official Gazette no. 695/27.12.2000. Through this decision, a change was made in the orientation of the Constitutional Court’s

The field of financial science is exposed to frequent changes in legislation, thus, even with regard to the proposed topic, through the provisions of Law no. 295/2020<sup>10</sup>, starting from March 31st, 2022, the powers of resolving appeals filed against debt securities issued by the central fiscal body came under the competence of the Ministry of Finance, being taken over from the National Agency for Fiscal Administration. By order of the competent minister, respectively order no. 1.021/2021, instructions were approved regarding the resolution by the specialized structures within the ministry of appeals against fiscal administrative acts.

By the same order, the organizational structure of the General Directorate for the resolution of objections was also approved, which includes: the Service for the resolution of appeals filed by large taxpayers (1 and 2), the Service for the resolution of appeals filed by small and medium-sized taxpayers, the Service for legislative coordination and guidance methodology of the territorial structures, the Office for the resolution of appeals filed by natural persons, as well as against the documents issued by the fiscal bodies of the central apparatus of the A.N.A.F., appeals resolution services from Bucharest, Ploiesti, Brasov, Timisoara, Cluj-Napoca, Iasi, Galati, Craiova.

Comparing the previous regulation with the text of the new provisions, it can be shown that the changes are of form and less of substance, being able to observe that the previous procedure is in a certain weight taken over in the new regulation.

These aspects can create problems. The resolution of the appeal is the competence of the specialized structure within the relevant ministry, but taxpayers *continue to submit appeals to the fiscal bodies that issued the relevant administrative-fiscal acts*<sup>11</sup>. It draws our attention the provision according to which upon receipt of the appeal, the issuing body of the fiscal administrative act, within no more than five days from the date of receipt, will draw up and transmit to the competent appeals resolution structure the appeal file, as well as the report with resolution proposals (this report contains clarifications regarding the fulfillment of the procedural conditions, mentions regarding the legal status of the company, as well as proposals for resolving the appeal, taking into account all the arguments of the appellant, both procedural and on the merits of the case, and the supporting

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jurisprudence in the matter of the constitutionality of the legal provisions regarding the prior administrative procedure from Law no.105/1997.

<sup>10</sup> Law no.. 295/2020 for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code, as well as the approval of some fiscal-budgetary measures, published in the Official Gazzete no. 1266/21.12.2020.

<sup>11</sup> According to the instructions for applying art. 269 C. fiscal procedure “the appeal is submitted to the fiscal body issuing the claim title or other fiscal administrative documents contested”.

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documents. The report it is approved by the head of the fiscal body issuing the title of debt or of the contested fiscal administrative act<sup>12</sup>).

*Can we understand from this wording that the tax authorities issuing the contested act maintain an important role in the preliminary administrative procedure, even if the solution will belong to the Ministry of Finance?*

Let's also remember that, where necessary, for the clarification of the causes, the dispute resolution structure can request points of view from the tax/customs body issuing the title of claim, respectively of the challenged administrative act, and regarding the clarification of the interpretation of the legislative framework, from the specialized departments within the Ministry of Finance, the National Agency for Fiscal Administration or other institutions and authorities. In the situation where contradictory points of view or contrary to the point of view expressed by the dispute resolution structure will be presented for the same case, the respective case may be submitted to the debate of the Central Fiscal Commission of the Ministry of Finance.

Last but not least, we must mention that, in the new procedure, the possibility of re-examining the settlement decision was introduced, a stage that reflects the principle of legal security. Thus, the decision issued in the settlement of the appeal can be re-examined, by the competent settlement body, at the taxpayer's request, in the situations expressly and limitedly provided by the law<sup>13</sup>.

According to the provisions of the Fiscal Procedure Code, the person who considers that his rights have been violated by a fiscal administrative act has the right to appeal. The object of this appeal is represented by amounts and measures established and entered by the fiscal body in the title of claim or in the challenged fiscal administrative act, as well as by amounts and measures not established by

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<sup>12</sup> Furthermore the Order no. 1021/19th April 2022 regarding the approval of the Instructions for the application of title VIII of Law no. 207/2015 regarding the Fiscal Procedure Code published in the Official Gazzete no. 482/13.05.2022.

<sup>13</sup> Furthermore art. 281<sup>1</sup> of C.pr.fisc., according to which: "The decision issued in the settlement of the appeal can be re-examined, by the competent settlement body, at the request of the taxpayer/payer, for the following situations:

- a) the application in the case of certain legal provisions that would have fundamentally changed the adopted solution was not considered;
- b) after the issuance of the decision by the dispute settlement structure, a decision is issued by the Central Fiscal Commission that offers another interpretation of the legal provisions incident to the case;
- c) before or after the issuance of the decision by the dispute settlement structure, a judicial decision of the High Court of Cassation and Justice of Romania is adopted, either for the resolution of some legal issues in principle, or an appeal in the interest of the law that dictates a certain judicial practice for issues subject to analysis different from the one in the appeal resolution decision;
- d) before or after the issuance of the decision by the dispute settlement structure, a decision of the Court of Justice of the European Union is adopted, which is contrary to the administrative dispute settlement decision".

the fiscal body, but for which there is this obligation according to the law. To resolve the appeal, the competent resolution body will issue a decision, which is binding for the fiscal body issuing the contested fiscal administrative documents. The next period will show us whether the arguments/advantages considered by those who initiated and promoted the changes in the analyzed procedure are effective and achievable, respectively:

- will a higher level of independence be ensured and, implicitly, premises for increasing impartiality in decision-making regarding the appeals filed by taxpayers against all documents issued by the tax administration by placing the structures outside ANAF?

-will this ensure the exercise by the Ministry of Finance of its legal prerogatives arising from the role of competent fiscal authority, as well as that of coordinating the unified application of the provisions of fiscal legislation?

-will the fiscal bodies issuing fiscal administrative acts be exempted from resolving appeals against these acts?

### CONCLUSIONS

*In one opinion it was shown that “in most cases, the preliminary procedure is nothing more than a confirmation of what was ordered by the fiscal inspection act” (Bufan Radu, Svidchi Nadia, 2021, p.17), and if we analyze the statistics, we note that official data often validates this situation. For example, in 2021 62.3% of all appeals pending before resolution bodies were rejected, in 2020 the percentage was 67.1%, in 2019 the rejection percentage was 71.2%<sup>14</sup>. We must also take into account the period of time that passes until the resolution body's decision is issued (for the year 2020, the statistics indicate a number of 61 days - average resolution time compared to the number of decisions issued<sup>15</sup>).*

*We wish that through sustained effort, by continuing the analysis of the theme, to contribute to the development of the doctrine, taking into account the complex knowledge requirements and needs of modern society.*

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