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TAX INFORMATION AND TAX AUDIT

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Abstract:

The essential characteristic of taxable matter is its great diversity, consequence of multiple forms under which income is in economy. Regarding some taxes, the taxable matter can be mistaken for the tax basis, while, regarding other taxes it constitutes a resultant of the unification of many elements or application of some diminution procedures of taxable matter. This paper debate about the evaluation methods of taxable matter, the existence or non-existence of deductions of some elements, in order to determine taxable basis, the characteristics of quotations and the application methods of those ones, to whom is added the influence of decreases and increases, constitute elements of technical nature.

Introduction

The evaluation methods of taxable matter, the existence or non-existence of deductions of some elements, in order to determine taxable basis, the characteristics of quotations and the application methods of those ones, to whom is added the influence of decreases and increases, constitute elements of technical nature.

The establishment of taxable matter, the evaluation methods, the techniques through whom are accorded deductions, decreases, increases and tax quotations in order to calculate and to cash the taxes belongs to design phase. The Ministry of Public Finances, and, during decisional phase, constitutes an attribute of legislative forum.

Making the tax audit – conditions and premises

In order to exert the tax audit, it is necessary that, at the beginning of any action such as this one, we identify and evaluate the taxable matter, fact that is accomplished by means of the techniques to establish the tax drawing that are defined as being “the ensemble of the proceedings owned by the tax

administration, in order to accomplish the taking over of a part of the income created in the real economy, in order to finance the public needs”¹.

The flows represented by the individual and global tax drawing are considered to be the result of the relations that appear between the economical elements and the technical elements.

The economical elements refer to the taxable matter that enters in the composition of the taxable basis. The essential characteristic of the taxable matter is its great diversity, a consequence of the multiple forms of the income in the economy. In case of certain taxes, the taxable matter may be merged with the taxable basis, while in case of other taxes, it represents a resultant of the aggregation of many elements or of the application of certain diminution proceedings of the taxable matter.

The evaluation methods of the taxable matter, the existence or the non-existence of deductions of some elements in order to determine the taxable basis, the shares’ characteristics and the methods of their appliance, to which we add the influence of reductions and increases, represent technical elements.

The establishment of the taxable matter, of the evaluation methods, of the techniques through whom are accorded deductions, reductions, increases and of the taxation shares in order to calculate and cash the taxes belongs, in the project stage, to the Ministry of Public Finances and, in the decisional stage, it represents an attribute of the legislative forum.

The evaluation methods were improved across the time in parallel with the evolution of the fiscal products. These have to be compatible with the principles that are placed at the base of determining the taxable matter, with the taxation techniques and with the economical agents’ obligations regarding organizing and managing the book-keeping.

The theory registers different classifications of the evaluation methods. The French economist Maurice Duverger distinguishes the direct evaluation or the evaluation based on proves, where he includes the evaluation based on the tax payers’ declarations and the evaluation based on the thirds’ declarations and also the indirect evaluation or the evaluation by assumption, in the sense of the evaluation based on the external signs, the contractual evaluation and the administrative evaluation. The same point of

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view is shared by the Romanian economists Iulian Văcărel, Florian Căteanu, Ioan Talpos, Gheorghe Bistriceanu, Florian Bercea.

Maurice Cozian divides the evaluation methods in three groups. The evaluation based on the tax payers' declarations and respectively on the thirds' declarations represents the real evaluation methods group that corresponds to the direct evaluation methods group of the authors previously mentioned. The second group is represented by the contractual evaluation and the third one, by the evaluation based on the external signs, where he includes the evaluation by assumption and the evaluation accomplished by the administration in case of the absence or of the incorrect tax declaration. Although, there is a structural distinction because in the evaluation based on the external signs it is also included, next to the proper evaluation by assumption that exists at the first group of authors, the administrative evaluation. But the evaluation made by the tax administration's organs is not based on the external signs for all the taxes.

Another author, Raymond Muzellec, identifies two group of methods: the evaluation based on the declarations made by the tax payers and by the thirds for the administration, also named direct evaluation, by real proves, where he adds the group of administrative evaluation methods, represented by the contractual evaluation, based on the external signs and the direct evaluation accomplished by the tax administration's organs in case of the absence or of the incorrect tax declaration. At Maurice Duverger and, at the same time, at the Romanian authors, the administrative evaluation represents a component of the group of indirect methods and it is not an ensemble of methods.

Muzellec's direct evaluation represents Duverger's administrative (indirect) evaluation. The classification differences appear because of the reference base of the authors: the taxable matter and/or the moral persons that participate to the evaluation operation. For the tax theory and practice, the methods classifications\ does not reflect the information value presented by the classification of the tax drawing.

Metaphorically, the weight centre moves in the direction of choosing the best evaluation methods. This means that the method has to contribute to the assurance of a correct establishment of a tax drawing, has to eliminate partially or totally the defalcation trend by different proceedings of the tax payers from legally established duties, has to correspond to the tax payers' obligations regarding organizing and managing the book-keeping and has to be accomplished with an effort and a cost as reduced as possible. Comparing to the number of the existent fiscal products, the evaluation methods are

relatively numerous, but the operations through which they are accomplished in practice may lead to options specific to each tax.

Evaluation by means of controlled tax declarations

The theoretical debates regarding the necessity to provide justice, commodity efficiency and taxation certitude have had an influence also on the evaluation method. The non-existence or the existence of a partial connection between the value of the taxable matter and the contribution ability have determined quitting the methods based on external signs and reducing the weight of the contractual evaluation based on the pre-established elements that belonged to the taxable matter, in favour of the evaluation by means of controlled tax declarations.

In our opinion, this represents an expression of the victory of the personalization principle on the reality principle in tax theory and practice, facilitated by the appearance and the development of the tax evidence system, of a tax education and of a civic education at the level of all the society's members and of a well structured and diversified objective control device.

Any method provides the possibility to apply the personalization principle for the direct taxes by means of the deductions and the reductions. Therefore, it is provided a connection between the taxable income and the real contribution ability of the tax payer, in the conditions of avoiding the erosion of the production reward factors by avoiding the repeated taxation of the income from the same source, by protecting the source, by stimulating the savings and orientating it in the investment's direction.

The extension of the methods above the indirect taxes was determined by the fact the information regarding the tax quantum are stocked at the level of the economical agents that transact and commercialize economical goods and services whose prices and tariffs contain the monetary quantum of the tax obligations.

We have to remark the fact that the method reflects the decentralization process of the evaluation activity, contributing to the reduction of the costs of the taxes' administration suffered by the tax administration.

Reported to the declared taxable income, the tax payers may be in two hypostases that give rise to two options to evaluate the taxable matter, the evaluation by the tax payer and the evaluation by a third person, both of them under the reserve of the subsequent control of the tax organs.

The evaluation method by means of the tax declarations of the tax payers is not a perfect method, but they present certain advantages comparing to the previous practice. It is based on the honesty of the tax payers' declarations and on the control right of the administration, allowing to establish the exact situation of the tax payers basing on all their incomes and obligations.

The disadvantage of the method consists of the natural trend of the tax payers to defalcate a part of the taxable matter from the taxable action by different techniques: accomplishing fake documents, fraudulent omissions, payments that do not have connections with the activity's object, registering in accounts that do not correspond to the legal stipulations, transferring the incomes by creating addicted society and other proceedings.

In order to eliminate the non-sincerity of the tax payers, the trend to proceed to tax fraud and to avoid the risk of reducing this evaluation method's functionality, it is needed the organization of certain control structures, through which we check the sincerity and the validity of the periodically declared incomes, but without affecting the activities developed by the tax payers. In the same time, it is needed the existence of certain structure that can solution fast the litigations that may appear between the tax payers and the administration, after they have been checked.

The control of the evaluations made by the tax payers are accomplished basing on the information that exists in their book-keeping, by factual checks of the developed activities, information extracted from the bank accounts and by checking the concordance between the living standard, the fortune and the declared incomes (in case of physical persons).

The organization of an information system meant to provide both the correct evaluation and the correct and objective control of the tax declarations based on certain information represents the method's great advantage. In the same time, its existence involves a cost that cannot cross the level of the accomplished incomes and it cannot represent an important weight. When these restrictions are not accomplished, we use methods to evaluate the taxable matter that are not that exact. The actual taxes that make the object of this method are: the global net income tax, the society tax, the industrial, agricultural and commercial benefits taxes, accomplished by the economical agents under the real benefit's system, the value added tax, the gross business number tax (the production taxes, the circulation taxes, the selling taxes), the successions and donations taxes.

The evaluation by means of the tax declarations made by thirds persons who know the exact situation of the tax payers completes in some situations the previous method or it may function independently of it.

The compulsoriness to evaluate and to present the documents from which results the quantum of the payments that were made, belongs to third persons without the compulsoriness to accomplish certain periodic tax declarations that should be laid down at the tax administration. So, the taxable incomes declaration is made at the express solicitation or when it is exerted the control act by the tax administration.

The method contributes to the simplification of the relations between the tax administration and the tax payers, if the periodic information control regarding the taxable incomes gets other valences. The administration's duty is limited at checking the economical agents, the public institutions and the persons who make payments to other subjects in the economy and, in consequence, who know the exact situation of the paid incomes. These can be: public societies and institutions for the employees' wages, for the fees and commissions paid to some persons, for the indirect taxes contained in the prices of the goods and services offered on the market (that do not make the object of the tax declarations laid down at the administration), the financial societies that have to pay the incomes brought by the financial products of their owners, the lodgers for the rents paid to the owners, the debtors for the debts paid to the creditors, the social security organs for the fees paid to the doctors, the brokers and the dealers for the transacted financial titles etc.

The third persons are interested (for two reasons) to evaluate and to declare exactly the taxable matter, even if there is the risk of the declaration's absence. The exact declaration's interest is connected to the avoidance of certain penalizations from the administration and to the possibility that certain incomes may be deducted from their own taxable basis at the declared level. The non-sincerity risk appears when certain taxable incomes are paid for activities accomplished in the parallel economy, when it is wanted the defalcation from the payment of certain social obligations or of certain indirect taxes afferent to some goods and services that are not evidenced from the book-keeping point of view. For all the taxes kept by stop at the source, there is the risk to postpone the pouring of the tax that is kept in order to be used as a resource attracted for financing the developed activities.

Regarded in ensemble, the analysed method presents the advantage of evaluating fast the taxable matter and the tax's payment, of the commodity for the tax administration and for the supportive tax payer. This provides the security of the flows of the tax drawing against the risk of the impossibility to pay the obligations, against the incomes' disappearance and the real (supportive) tax payers.

The contractual evaluation

The existence of a great number of small economical subjects who organize legally only one summary tax evident or who do not have any obligation of this nature determined the maintenance in the field of the evaluation methods existent in the tax practice of the contractual evaluation methods. The appearance of this method represented a step forward comparing to the evaluation based on the external signs or by assumption, since the elements are not external anymore to the taxable matter, this represents the result of the discussions regarding the tax equity because the taxable income and fortune may suffer changes while the external signs remain constant and, as a consequence, the tax drawing is isolated from the consequences of the economical fluctuations and of the contribution ability.

The contractual evaluation is accomplished depending on a number of pre-established economical elements, that are specific to the activities developed by the tax payers, that are in direct relation with the taxable matter represented by the income or by the fortune and the are considered to influence their contribution ability.

We consider that the major disadvantage of the analysed method consists in the fact that, no matter the number of the used revealing elements, we arrive to a general under-evaluation of the taxable mass. This trend is stimulated by the existence of two influences, one of them from the legislative frame and the other one from the tax payers.

By the legislative frame, we may establish the contract type for each tax. It is possible to group them, in this sense we may identify legal contracts, conventional contracts and collective contracts.

In case of the contract established by the legislative frame, we establish revealing elements of the income that are valid for all the tax payers that accomplish incomes from the same source and in the same conditions. So, the reference basis is established aprioristic by the law. For example: the medium efficiency hectare share on culture and fields types, determined yearly for the agricultural benefits accomplished by certain economical agents established by law, the rents practiced on the market in order to establish the locative value of the buildings etc. The taxable matter's value is determined semi-automatically since the tax administration usually owns a certain appreciation freedom.

The conventional or individual contract is established basing on the discussions between the tax payers and the administration. It wants to take into account the particularities of the activities developed by every tax payer.

The administration uses in this purpose the informational basis that it owns and the information supplied by the tax payers. By law they are established the economical subjects that make the object of the individual contract (persons who exert o liberal professions, shopkeepers).

The collective contract combines the evaluation based on declarations with the contractual one.

The incomes are evaluated according to the declaration and the contractual spending, according the legal stipulations. For example, depending on the rents we estimate the professional spending, when we do not keep their evidence.

The other influence comes from the tax payers that have the possibility to denounce the contract when the evaluated taxable income is bigger than the accomplished income.

In order to exclude the possibility that this proceeding was considered unfair by the tax payers, by the legislation it would be justified to be granted the option right in favour of a real evaluation specific to the declarative system, in the conditions of the organization of the tax evidence and the tax payers will always choose the most advantageous evaluations system.

The under-evaluation of the taxable basis influences the tax flows, determining losses for the budget. The tax justice's principle is affected because the contribution ability is partially influenced.

For the tax payers, the contractual method is handy, it presents the advantage of simplifying the evidence and of reducing or eliminating the costs with its keeping. Since the established taxable value makes the object of a subsequent checking, the tax payer is protected against the risk of an error, existing in the same time a reduced interference in its activity.

At its turn, the administration is dispensed of controlling repeatedly a great number of economical subjects either with a summary book-keeping, or with a badly organized one. As a consequence, the control acts' number decreases, these ones being limited to the moment of establishment of the contract and of the subsequent checking, influencing positively the costs made of the public administration.

The evaluation based on the external signs or by assumption

It is an extremely simple method, but it is also imperfect for corresponding to the modern demands of tax justice. It still subsists in the tax practice in order to establish certain local taxes. The disadvantages that determined its quitting derive from the rudimentary evaluation technique that leads to the establishment of an approximate taxable value and to the

impossibility to establish a correlation between it and the tax payer's contribution ability.

The proper method represents a limited appliance of the reality principle since the used indexes are not relevant enough to determine the real value of the taxable matter.

The taxable method has in view its ensemble but, since the taxable value is established by means of some indexes, considered as representing external signs of its value, in our opinion, the tax drawing does not reflect either the real fluctuation of the taxable matter's value, or the real contribution ability, but only an assumed one. The impossibility to provide the correlation of the contribution ability with the tax obligation and the neglecting of the incomes and of the fortune that do not correspond to the well pre-established external signs make the method unfair in its ensemble. In the same time, it is unproductive for the budget because of the extremely low and relatively stable efficiency.

Even if the method leads to the establishment of a tax drawing over an arbitrarily established value, for the tax payer it presents the advantage that it is a discrete method that does not need any periodical control of the tax administration.

For the administration, the method is convenient because the contracts with the tax payers are extremely reduced, being limited at the establishment of the value and the control of the value at big time intervals, influencing positively the administration's cost.

Corrective evaluations

The corrective evaluation contains an ensemble of proceedings through which it is established currently or it is determined in exceptional situations the taxable value and the legal quantum of the tax drawings. The tax administration's right to establish the correct value of the taxable matter is not limited to the procedure named currently administrative evaluation (after all, the contractual evaluation is also an evaluation made by the tax administration), either evaluation ex officio, or evaluation by assumption in a penalizing purpose. All these names respond to an ensemble of questions. Who unleashes the evaluation procedure? The tax administration does! How is it developed? Ex officio, basing on the right to control and correct the quantum of the tax payer's tax obligation! Why? In order to correct the established obligation or in order to sanction the defalcations from the legal obligations' payment! Therefore, it appears a limitation that cannot be accepted of the situations when the tax administration interferes, in order to

provide the respect of the tax laws and the protection of the claims that the state has over the tax payers.

As a consequence, the corrective evaluations contain the ensemble of procedures owned by the tax administration in order to establish correctly the taxable value and the tax drawings' quantum.

The corrective evaluations appear as a consequence of the exertion of the control right by the administration and it is determined by the producing of the following facts: defects of the tax declaration, the absence of the tax declaration in the legal terms frame, omissions and errors regarding the evaluations made by the tax payers or the specialists of the tax administration, no matter if these were produced with or without the intention of the involved persons.

Depending on the relations that appear between administration and tax payers and on the causes that have unleashed the corrective evaluation, we may identify procedures of correcting the previously accomplished evaluations and procedures of ex officio evaluation.

The procedure of correcting the previously accomplished evaluation is applied to the tax payers who respect their obligations regarding the book-keeping organization, lay down tax declarations in the legal terms frame, calculate, keep and transfer the taxes by stopping to the source in the legal terms frame. The procedure includes in its sphere the ensemble of the tax payers, no matter if they are under the system of the declarations towards the administration, under the contractual system or under the system based on the external signs.

The procedure is unleashed when the tax payers or the tax audit organ finds omissions and errors that influence the tax flow meant to finance the budget. When the errors are found by the control organs, it is followed the common right procedure that supposes the participation of the both parties to the re-establishment of the correct situation. The re-establishment of the legal taxable value and of the tax drawing's quantum is extended over the entire prescription period. The tax payers have either the right to fight expressly or tacitly, or the right to contest by bringing proves to the control organ's decisions.

The tax payer's responsibility is different and depends on the producing of the error with or without his intention (when he accomplishes the evaluation under the reserve of the administration's control), on the person that found and corrected the error (tax payer or administration). When it is produced exclusively because of the administration, case that may appear in case of the contractual evaluation system or in case of the one based on some external signs, the tax payer is absolved of responsibility.

The ex officio evaluation procedure is unleashed when, even if some tax payers are forced by the law, they refuse though keeping the tax evidence or accomplishing the tax declarations or they do not accomplish them in the legal terms frame, they do not calculate and they do not transfer the taxes by stopping to the source or there is a discrepancy between the declared incomes and the information owned by the tax administration.

The administration uses in this case the contradictory right procedure that does not suppose anymore the participation of the tax payers to the evaluation act. The evaluation is accomplished basing on the elements known by the administration: information of the bank accounts, information obtained from the thirds, the locative value of the owned and achieved buildings, the total amount of the known personal spending (living cost, clothes, food and investments), cars, agreement ships, planes, any kind of horses that the tax payers owns. The global taxable value is determined depending on the value of the elements or on certain standards applied over them, through which it is followed the establishment of the real contribution ability of the tax payer.

The tax payers have only the right to accept or to contest basing on proves the tax administration's decision. In case of contestation, both of the parties have to prove the expressed points of view, by supporting them with proves in front of the jurisdictional court.

From these things, it results the compatibilities and the incompatibilities that exist between the principles of determination of the taxable matter, on one hand, and the evaluation methods of it, on the other hand.

The evaluation method basing on the external signs is compatible, in case of the direct taxes, with the reality principle and, in case of indirect taxes, with the specific taxation technique. The evaluation based on declarations is compatible with the personalization principle and with the ad-valorem technique. The contractual evaluation contains elements that correspond to the reality principle, but also the personalization principle, evaluated after pre-established real elements but specific to the activity developed by the tax payer.

The corrective evaluations contribute to correcting the tax flows, acting in the direction of their unity.

The sensitiveness of the tax flows' efficiency is much higher in case of the ones who make the object of the declarations, decreases in case of the contractual evaluation and it is minor in case of the evaluation based on the external signs, comparing to the first two of them.

All of these principles and techniques are, at their turn, connected with the proceedings of determination of the tax drawings' quantum, by means of the proportional and progressive shares and of the specific tariffs.

In order to accomplish the tax inspection, the control organs ask the economical agents to put at their disposition the tax evidence afferent to the checked period of time. No matter the form of the tax inspection, respectively general or partial, it can be accomplished only by checking the financial-tax documents regarding the economical agent's activity, documents that are reflected from the value's point of view in the tax checking balance.

According to the legal stipulations, the control organs have to check, at the beginning of the tax inspection, if there is a concordance between the tax evidence of the economical agent and the fiscal evidence, according to the synthetic file elaborated by the territorial financial administration. The eventual differences are regulated by emitting by team that control the "Regulating note for the fiscal evidence – tax evidence" document.

In order to accomplish the "Taxation decision regarding the added fiscal obligations established by the tax inspection" forms, the control organs have to identify, basing on the financial-tax documents and the tax evidence, the operations that do not respect the legal stipulations.

As a consequence, any tax inspection cannot be accomplished without the existence of the tax evidence and of the information offered by it.

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