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Reflections on the right of appreciation of the fiscal authority with an impact on young entrepreneurs

Art. 6 para. (1) Fiscal Procedure Code:

- *the relevance of the fiscal facts by using the means of proof provided by law and to adopt the solution based on the legal provisions, as well as on complete findings on all the edifying circumstances in concerned at the time of the decision*

Following :

- *must take into account the opinion issued in writing by the competent fiscal authority to the respective taxpayer/payer within the activity of assistance and guidance of taxpayers/payers, as well as the solution adopted by the fiscal authority within a fiscal administrative act or by the court, by a final decision previously issued, for similar factual situations to the same taxpayer/payer*

Rights and obligations of the parties in the fiscal legal relations:

- *only by rhythmically supplying the amounts from taxes and duties;*
- *will be possible to respect and realize the other constitutional rights of citizens*

1. The notion of the right of assessment in relation to the fiscal obligation due to the consolidated general budget

- Art. 1 point 27 of Law no. 227/2015 on the Fiscal Procedure Code: *„obligation to pay any amount which is due to the general consolidated budget, representing the main fiscal obligation and the accessory fiscal obligation”*
- Another definition: *„The fiscal obligation consists in the duty to pay on behalf of the public budget (state budget, state social insurance budget, local budgets) taxes, fees and other budgetary contributions regulated by law.”*

Tax liabilities are classified as follows:

- a) Taxes and fees:
 - a.1. profit tax;
 - a.2. income tax on micro-enterprises;
 - a.3. income tax;
- a.4. the tax on incomes obtained from Romania by non-residents;
- a.5. the tax on representations;
- a.6. value added tax;
- a.7. excise duties;
- a.8. local taxes and fees;
- a.9. construction tax.

b) Compulsory social contributions:

- b.1. social insurance contributions, due to the state social insurance budget;
- b.2. the contribution of social health insurance, due to the budget of the National Fund of social health insurance;
- b.3. insurance contribution for work, due to the general consolidated budget.

From the meaning of the tax definitions, we can keep in mind that this payment:

- a)** it is always a monetary contribution;
- b)** the persons subject to this payment are persons (physical or legal) who obtain income or own goods;
- c)** the tax is provided by law;
- d)** the payment of the tax is final, therefore, non-refundable;
- e)** the destination of the tax payment is the state budget.

Notion of tax:

“the payment made by physical or legal persons legal services for their services by public institutions or authorities.”

Compulsory social contribution - defined in art. 7 point 10 of the Fiscal Procedure Code :

„Compulsory sampling carried out under the law, which aims protection of obliged physical persons to insure against certain social risks, in exchange for which these persons shall enjoy the rights covered by that levy.”

Art. 3 para. (2) of the Code of Fiscal Procedure, which states that, the provisions contained in the Civil Code and in the Code of Civil Procedure:

- tax procedure- constituting a common law procedure
- importance in identifying the exact limits of the right to assess

2. Aspects of fiscal procedural law regarding the exercise of the right of appreciation

2. 1. On the basis of procedural issues, which the fiscal authority is required to comply with, by cumulating them, to issue a decision stating:

- a)** the fiscal situation of the taxpayer, by using the means of proof provided by law;
- b)** the adoption of a judicious fiscal solution, correct and timely, according to the legal provisions;
- c)** determining the concrete situations for the elaboration of complete findings.

2. Based on documents representing:

- a)** the opinion issued in writing by the competent fiscal authority to the respective taxpayer, but this consideration must be realized only within the activity of assistance and guidance of the taxpayer;
- b)** the solution adopted by the fiscal authority within a fiscal administrative act or by the court, by a final judgment, previously issued, for similar factual situations to the same taxpayer.

IMPORTANT POINTS:

- existence of differences between the state of affairs and the information taken into account when issuing a written opinion or when issuing a fiscal administrative act to the same taxpayer;
- legislator ordered the fiscal authority have the obligation to state in writing the reasons for not taking into account the prior opinion;
- the conduct of the tax authority is reflected in paragraph 2 of Article 6 of the Fiscal Procedure Code, by setting limits;
- For well-justified cases and on a thorough substantiation, the time (term) may be extended, but only with the consent of the head of the fiscal authority

3. The young entrepreneur - vulnerable category of the right of appreciation

- the role of the entrepreneur in the economic development of the country occupies a significant place;
- is given by the ability with which they develop the innovative idea, the necessary knowledge they possess, to invest your creativity in the success of the company, as well as the determination they have to start realizing their dreams;
- fiscal legislation does not make such a distinction, therefore we consider that it is necessary, as in determining the factual situation, concrete situations for the elaboration of complete findings

PROPOSAL:

Lege ferenda:

1. the concrete way of accomplishment, can take place, by amending and supplementing paragraph 6 of Article 6 of the Code of Fiscal Procedure, in the sense of doubling the reasonable time (term) to exercise its right or to fulfill its fiscal obligation due to the state budget.
2. the fiscal authority may initiate a proposal for the issuance of a subsequent administrative act, in order to eliminate young entrepreneurs from conducting risk analysis, for a sufficiently limited period of time.

Conclusions:

- a) the mechanism for the exercise of the right to assess by the fiscal authority is not easy for the young entrepreneur, in the current form provided in art. 6 of the Fiscal Procedure Code;
- b) the management of the fiscal authority must take into account that exercise of the right of assessment *„addressees of decisions which significantly affect their interests they must be given the opportunity to make their views known in a useful way on the elements on which the administration intends to base its decision”*.

THANK YOU VERY MUCH!

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