

THE EXTINCTION OF THE FISCAL OBLIGATIONS BY PAYMENT AND ITS SUPPLEMENTARY OPERATIONS IN THE LIGHT OF THE NEW REGULATIONS OF THE FISCAL PROCEDURE CODE

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Abstract

Fiscal debt discharge by payment is the goal of all fiscal systems of the modern world, since payment leads to the collection of money for the public funds. For this reason the legislator has provided detailed regulation concerning payment in an attempt to meet the everyday needs and to eliminate discrepancies that can overburden the public funds collection process. Alongside payment, the regulations, and this article as well, dwell on collateral operations to payment such as compensation, reimbursement, applicable sanction and due indemnities for late payment of the fiscal debts. The present article also looks on the legal regulations concerning the due date for payment, the order of fiscal debts discharge when there are more debts due for various amounts of time, and to all the other aspects that require further comments and explanations, using references to the doctrine for a better understanding of the newly modified Romanian legislation.

Key words: *fiscal debt, payment, public funds collection, due date for payment*

1. The payment is the classic way for a fiscal debt to be extinct, meanwhile generating its accomplishment

The payments of the fiscal debts are done through the State Treasury as structure of the Public Finances ministry, respectively through its units in the territory.

The payment of the fiscal obligations is to be done by the borrowers distinctively for each type of main fiscal debt (tax, fee, contribution or any other some owed to the public budgets) as well as for their accessories.

2. The new code of fiscal procedure has many regulations concerning *budget debts* in their larger meaning, thus accomplishing a recall of the first post-Decembrist regulation, namely the GO no. 11/1996 concerning the enforcement of the fiscal debts (repealed) that referred to the budget debts and not to the fiscal ones, as it was proceeded with the further norms that came to replace this first regulation.

On the other side we consider that the notion of *fiscal debt* has at least two meanings, namely:

- *stricto sensu*, it refers exclusively to debts as taxes, fees and contributions, as well as their accessories, because they are as the main debts, thus having the same nature;

- *lato sensu*, it refers to all debts categories with public budget destination, thus those that are not exclusively taxes, fees and contributions but benefit from the same juridical regime consecrated through the Fiscal Procedure Code.

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Taking into consideration the repeated confusions that led to hesitations in the application of the Fiscal Procedure Code on some categories of debts, the new Code valid since 1st of January 2016 refers repeatedly to fiscal debts as well as to budget debts.

We consider the old terminology used by the OG no. 11/1996 of *budget debt* more correct and comprehensive than the one of *fiscal debt* that restrains a lot the area of application of the code, that is uncorrect and doesn't represent the legislator's goal. On another side, the distinction the fiscal legislator makes now between *fiscal debts* and *budget debts*, respectively *budget creditor and debtor* is considered to be equally inexact, due to the fact that their relation is from the part to the whole because all the fiscal debts are, in the same time, budget debts but not vice versa. However we can't understand the legislator's reluctance in giving up totally the notion of *fiscal debt* because it is included in the notion of *budget debt* with other debt categories with public budget destination, as the non-fiscal budget incomes or the capital incomes. Such a generalization could lead to an easier and less complex regulation, exempting the ones who are supposed to interpret and apply the law from possible confusions or misunderstandings.

3. Another term specification we should like to draw refers to the way the fiscal organs are designed. Thus, the debts owed to the state are administrated by "the state's fiscal organs", formulation that we appreciate to be more correct and rigorous than the one used by the new Fiscal Procedure Code, namely the one of "central fiscal organs", expression that can send us to the central level fiscal organs, namely ANAF's central structure. This confusion can appear frequently and we think it can be avoided using the expression "the state's fiscal organs" as we have already mentioned. *Mutatis mutandi*, when we talk about the local fiscal organs, can be used the expression "fiscal organs of the administrative – territorial units" in order to be separated from the ones of the state.

4. *The payment terms* are established by the dispositions of the Fiscal Code or by laws that regulate different categories of taxes fees, contributions or other sums owed to any public budget.

For the fiscal obligations administrated by the Ministry of the Public Finances and whose payment terms are established by the Fiscal Code and other special laws, as we already showed, the payment terms are settled by an order of the public finances minister¹.

For the fiscal debts for local budgets that don't have payment terms settled by regulating laws, they will be settled by an order of the minister of regional development and public administration, with the notice of the public finances minister.

The fiscal debts administrated by the state's fiscal organ settled based on the tax declarations payed on the unique account and having the maturity payment different from the day of 25, change the day of 25 stipulated in the regulating norms.²

Terms of payment for:

- differences of main fiscal debts and for accessory fiscal obligations settled by tax declaration;
 - debts resulting from the solidary liability decision;
 - budget debts representing recoveries of injuries brought to the public budgets and that are established by a decision of the competent authority;³
 - debts coming from amending statements registered by the contributor¹;
- they are settled according to the date these obligations have been announced to the contributor, as it follows²:
- if the communication date of the fiscal obligations is between 1st and 15th of the month, the payment is done until the 5th of the following month;
 - if the communication date of the fiscal obligations is between 16th and 31st of the month, the payment is done until the 20th of the following month;

The fiscal obligations for which payment delays and rescheduling have been obtained, as well as their accessories, will be paid at the term established by the document that grants the reliefs¹.

We want to underline that the recovery of damages brought to the state's public funds can often be done by judge decision, as it comes out from the interpretation of the dispositions of art. 100 line 1 Fiscal Procedure Code. In such a situation the establishment of the terms of payment is done following the rules above, according to the moment the judge decision was issued, decision that has the value of a budget debt. According to art. 100 line 2 of the Fiscal Procedure Code, the disproof of the budget debt established in this way will be done under the procedures stipulated by the Civil Procedure Code dispositions, so to say by ordinary and extraordinary means of attacking a judge decision. If the decision became executory and it is proceeded to its execution, a contestation can still be promoted against the enforcement, if they attack the procedure aspects concerning the enforcement's execution, according to the dispositions of the Civil Procedure Code.

5. *The moment the payment is considered done* is different, function of the modality of payment chosen by the debtor, such as¹:

- if the payment is in cash, the moment it is done is the same with the date written on the document proving the payment, issued by the organs or persons abilitated to cash the money for fiscal obligations;
- if the payment is by postal mandate, the moment the payment is done is the same with the postal date written on the mandate;
- if the payment is done by bank settlement, the moment the payment is done is considered to be the date the banks debit the payer's account. If the bank doesn't do bank transfers in 3 working days since the day the payer's account was debited, the moment the payment is done is considered to be the date the credit operations in the treasury account are done, reason why, after the 3 days pass, delay increases are calculated;
- if the payments are done by bank cards, the date the transaction was done, as it is confirmed by the procedure authorising them;

- if the fiscal obligations are extinct by capitalizing the guarantee, the extinction date is the one the guarantee was constituted;
- if the payment is done by the cancellation of the mobile stamps, the moment the payment is done is considered to be the date of the registration, at the competent organ, of the document for which the due mobile stamps had been deposited and cancelled.

6. *The order of the fiscal obligations extinction* is different, speaking about fiscal debts owed to the state or fiscal debts owed to administrative-territorial units.

Thus, for the debts administrated by the fiscal organs of the state, the debtors of the fiscal debts pay in a unique account of the public Treasury and the distribution of the collected sums is done by the fiscal organ proportionally with the owed fiscal obligations.

If the debtor makes a payment that is not sufficient for all his budget and fiscal debts to be extinguished, a situation of competition appears for many types of budget and fiscal debts. As a principle it will be passed to the extinction of the correlative debts of that type of main fiscal debt indicated by the debtor. The way this indication can be applied is not mentioned in the contents of the new Fiscal Procedure Code, that's why we think it can be done by any way or means. However, for the debtors wish to be opposable to the fiscal organ, this indication should be done in writing by the fiscal or budget debtor, as the case.

If the debtor doesn't mention the debt he wants for payment extinction, it will be proceeded to debts extinction in the order established by the law, namely:

- all the main fiscal obligations, in order of seniority, and then the accessory fiscal obligations, in order of seniority;
- the obligations with future terms of payment, at the debtor's request.
- in its contents, the Fiscal Procedure Code also refers to some special situations, so that for these situations it settled many exceptions from the previously mentioned rule, as it follows:

a. If a *rescheduling payment* decision was issued, the order the budget debts are extinct is the following:

- the rescheduling installments and/or, if the case, the fiscal obligations on whose payment depends the keeping of the payment rescheduling validity;
- the sums owed in the account of the following installments from the payment graph, until the concurrence with the payment rescheduled sum or until the concurrence with the paid sum, as the case.

b. If the fiscal organ approved a payment delay request, then the order the budget debts are extinct is the following:

- the owed fiscal obligations, others than those making the object of the payment delay;
- fiscal obligation that are payment delayed.

c. In the case of the debtors under the law incidence concerning insolvency, the extinction order is the following:

- the fiscal obligations born after the date of the insolvency procedure opening, ordered by their order of seniority;
- sums owed in the account of the installments from the payment programs of the fiscal obligations, contained in the confirmed judicial reorganization plan, as well as accessory fiscal obligations owed during the reorganization, if the plan stipulates their calculation and payment
- fiscal obligations born previously to the date the insolvency procedure was opened, in order of seniority, until they are totally extinct, in the situation of the contributors in state of bankruptcy;
- other fiscal obligations other than those from letters a) - c).

d. In the case of the contributors benefiting of state aid as subventions from the state budget in order to supplement their own income, according to law, the fiscal obligation corresponding the fiscal period the subvention refers at, regardless the payment is done from the subvention or from the own incomes.

e. If the payment fiscal obligations settled by the organs of fiscal inspection as well as the fines of any kind, the fiscal obligation or the fine the contributor chose is with priority extinct.

In contrast to all the previous aspects that refer to budget debts administrated by the state's fiscal organs, in the situation of the debts administrated by the fiscal organs of the administrative-territorial units, the contravention fines individualized in enforcements are with priority extinct, in order of seniority, even if the debtor indicates another type of fiscal obligation. These stipulations are not applied when paying taxes for the local budgets feeding.

7. In order to correctly establish the extinction of the fiscal debts, a very special aspect refers to the way the debts' seniority is established¹

- function of the maturity, for main fiscal obligations;
- function of the payment term, for the main fiscal obligation differences settled by the competent fiscal organ as well as for the accessory fiscal obligations;
- function of the date the rectifying fiscal obligations were registered at the fiscal organ, for the main fiscal obligations differences settled by the contributor/payer, if the law settles his obligation to calculate the fiscal obligation quantum;
- function of the registration date, in the terms of the law, of the enforcements sent by other institutions.

8. In practice, there is the possibility to make any public budget of undue payments. In this situation, the in force legislation stipulates the possibility of sums reimbursement or restitution¹ from the public budgets by those who have such debts.

The restitution of the sums is done on the request of whoever thinks having such debts and can prove it. It can appear as a result of the following situations:

- when payments have been done without the existence of a receivable title;
- when payments have been done in addition to the fiscal obligation;
- when payments have been done as a result of some calculation errors;
- when payments have been done as a result of a wrong application of some legal provision;
- when the law provides the reimbursement of some sums from the state budget;
- when the judicial organs or other competent organs dispose the restitution of some sums;
- when, after enforcements, have been discovered debts owed to the public finances and amounts in addition.

The restitution can work prosecution ex officio, in the case of tax differences as a result of the annual regularization of the physical person's income tax. Thus, the restitution will be done in 60 days since the communication of the taxation decision. It's also prosecution ex officio that the restitution is operated in the situation of the sums cashed by deduction, as a plus to the fiscal debts for which the deduction was settled, but these ones have to be returned in at most 5 working days since the cashing.

If sums in currency are confiscated, their return is in lei, under reference exchange rate for euro, communicated by the National Bank of Romania at the date the judge decision disposing the return of the confiscated sums remains definitive and irrevocable.

If, after the physical person's death or the juridical person's cessation, sums to be returned or reimbursed are settled by definitive judge orders, these sums are returned or reimbursed only if there are successors or any other titular who proved their reimbursement or return rights, in the letter of the law.

If any credit institution turns, of error, to the fiscal organ sums representing irredeemable credits or funding coming from international institutions or organizations in order to run some programs or projects, those sums are returned at the request of the credit institution or of the contributor/payer, even if this one registers remaining obligations.

The new Fiscal Procedure Code also contains a series of special regulations concerning the VAT refunds. Thus, the value added tax (VAT) solicited at refunding through expense accounts with VAT negative sum with refund option, registered in due registration limit, are refunded by the state's fiscal organs. If the refund solicitation was registered after the legal term, the refund will be operated in the account of the following period.

The fiscal organ of the state will decide if it makes the fiscal inspection previously or subsequently to the reimbursement approval, based on the risk analysis. The fiscal inspection will be done subsequently to the reimbursement if the return with negative amount of VTA with reimbursement option is up to 45.000 lei. But if

the return with negative amount of VTA with reimbursement option is over 45.000 lei, the fiscal inspection will be previously done.

The VTA reimbursements won't operate if:

- the contributor/payer is registered in the criminal record with deeds that are sanctioned as offenses;
- the state's fiscal organ, based on the detained information, finds out that there is the risk of an undue reimbursement.

The aspects concerning the refund of sums from the state's public budget also contain special mentions about the income tax. Thus in the situation when the payer has at the source an income tax bigger than the legal due one, its refund is done by the payer at the request of the contributor, if that one was registered inside the prescription time.

The sums refunded by the payer are regularized by him with the same type fiscal obligations owed in the fiscal period in which the refund was done by registration of a declared regularization/refund request. The declared regularization /refund request can be subsequently registered, in the term of prescription of the right at refund request. For the differences to be refunded the compensation or the refund will operate, as the case.

For the non-resident contributors registering their fiscal residence certificate after the tax was retained at the source by the income payer, the refund and regularization are done even if for the fiscal period in which the refund fiscal debt was owed the book further verification was quitted as a result of the fiscal inspection.

In the situation in which the payer doesn't exist anymore or this one is in insolvency based on the Law no. 85/2014 concerning the procedures of insolvency prevention and of insolvency, the refund of the income tax held at the source, bigger than the legal due one, is done by the state fiscal organ based on the refund request registered by the contributor.

9. *The compensation* is a modality of fiscal debts extinction, amiably done, which leads to their accomplishment.

For its accomplishment a fundamental condition must be fulfilled, namely, reciprocal debts must exist between the authorities solely entitled by law to administrate the sums of money that circulate through the public budgets, on one side, and the fiscal debtors, on the other.

By its nature, the compensation imposes the existence of a reciprocal debt, the compensation being done up to the concurrence of the least amount.

The Ministry of Public Finances administrates the amounts of money circulating through the central budgets (of the state) and the authorities of the local public administration administrates the local budgets. The compensation comes between the sums owed by the fiscal debtors to these budgets and the sums/amounts to be refunded or returned from these budgets to the same fiscal debtors. So to say, both subjects of the juridical reports born inside the compensation get, in the same time and reciprocally, the quality of a debtor as well as the one of a creditor.

A second very important condition to be able to operate the compensation refers to the fact that the reciprocity of the quality of debtor and creditor must refer to the same subjects. Thus, the fiscal debtor should have, in the same time, flows and debts, to the Ministry of Public Finances or to a certain authority of the local public administration. So, there won't be a compensation of flows to the central budgets with credits to the local budgets of the same debtor or vice-versa.

As a principle, the compensation of the fiscal debts of the debtor will be done with the obligations owed to him by the same public budget. After these obligations have been extinct and there still are debts to be compensated, but with other public budgets, one can proceed to a reciprocal extinction of obligations to other budgets. For that the condition of reciprocity of the subjects' identity and obligations must be maintained.

In the case of the local budgets, the condition of reciprocity of the subjects' identity and obligations between who the compensation will happen, is stricter.

If many fiscal debts of the same type are concurrent, it will be proceeded to their extinction by compensation in the order shown for the extinction of the fiscal debts by payment, up to the concurrence of the smallest amount.

The compensation is done by the competent fiscal organ, prosecution ex officio or at the debtor's request. The refund or reimbursement of the sums owed to the fiscal debtor can operate only after the extinction by compensation of the existent fiscal debts and, if there still are sums to be refunded, after the extinction of all the fiscal debts.

The competent fiscal organ, from the territorial point of view, is the one from the tax domicile of the debtor.

The request for compensation must detain elements for the solicitor's identification as well as the extent and nature of the fiscal debts that will make the object of compensation. The request of compensation must also be accompanied by the documents proving the contributor's right at the reimbursement or refund of the amounts whose compensation is solicited

The compensation can be done prosecution ex officio, any time the fiscal organ finds out the existence of some reciprocal debts towards the fiscal debtors. More precisely, the compensation prosecution ex officio can operate anytime in the term of prescription whose fulfillment will lead to the extinction of the fiscal organ right to ask for the enforcement of the fiscal debts, term that starts at the moment the debt is liquid and claimable.

The compensation result (on request or prosecution ex officio) will be registered in a document called compensation note that will be communicated to the contributor in 7 days time since the compensation operations have been done.

10. *Non-payment on term of fiscal debts* can lead to major imbalances in economic plan, which can be in a certain amount counteracted through the obligation of the fiscal debtors to pay the interests and delay penalties or to delay raise, as the case.

Referring to taxes, fees, contributions and any other incomes with public budget destination, the legislator uses the syntagm of "main debts" and to design the payment

obligations coming from the non-payment in term of the main fiscal debts the legislator uses the expression of "accessories of fiscal debts" , creating a certain confusion in the sense that, sometimes, it is not very clear if it refers to the above mentioned delay raises or to the delay interests and penalties, as they used to be, at a certain moment, established by the Romanian fiscal legislation, or even all the three, equally. From the contents of the Fiscal Procedure Code, the last hypothesis is the most plausible, although there are no clear specifications pf the kind.

The legislator also makes a distinction between the non-payment of the fiscal debts owed to the state's public budgets, situation in which the accessories are the interests and the delay penalties, and the non-payment of the fiscal debts owed to the public budgets of the administrative-territorial units, when the accessories are the delay raises.

There are regulations only for some categories of budget incomes for which no accessories are owed, such as: fines of any kind, accessory fiscal obligations established by the law, expenses for enforcement, juridical expenses, confiscated sums, as well as the sums representing the equivalent in lei of the goods and the confiscated sums that are not at the scene of the crime. Also, for the fiscal obligation differences established by rectifying statement of ownership or tax decision, no accessory fiscal obligations are due for the sum paid in the account of the main fiscal obligation, if, previous to the fiscal obligation establishment the debtor made a payment and the paid sum didn't extinct other obligations. The same with the situation of the debtor who paid the fiscal obligation and the tax declaration was registered after the payment was done.

The accessories of the fiscal debts become income for the budget the main debts belongs to. The accessories quantum is established through decisions issued by the state or administrative-territorial units' fiscal organs, as the case.

The interests and delay penalties can de up-to-dated yearly, by the decision of the Government, function of the evolution of the interest's rate of the National Bank of Romania.

Since the 1st of January 2016, some new penalties for non-declaration have been added to the old ones, that are hard to be categorized as accessories to main fiscal debts or not. We think there are arguments to appreciate that the legislator wished they were included in this category, so we'll add our appreciations.

11. The following is a referring to interests and delay penalties, as well, because we appreciate that the legislator had a certain reason to regulate them together and that's the juridical nature of the delay increase – the juridic institution that was expressively repealed by the legal dispositions we referred at in the present material, and then to return to it.

So, in the literature of speciality the opinions were unanimous in appreciating the general and essential sanction character of the delay increase for non-payment at term

of the fiscal debts. Thus, some authors considered them administrative pecuniary sanctions.¹

In this regard it was shown that the delay increase was a sanction typical for the public law, the fundament of its application being the violation of a duty of constitutional order. According to art. 53 from the Constitution, the citizens are obliged to contribute, through taxes and fees, to the public expenses. Directly referring to the citizens, the constitutional text takes into account law collective subjects, as well: commercial societies, autonomous administrations, "other juridical persons", the obligation of a juridical person to pay a tax being held by the citizens "in whose benefit that juridical person administrates and values the goods on his property-patrimony".² But, the same authors qualified the delay increase as a financial law sanction, underlining that this qualification doesn't change its essence of administrative sanction. Backing up the administrative character of the delay increase we went on showing that, for administrative-disciplinary misconducts in the financial field, the law provides a category of specific sanctions, namely the delay increases.

Other authors consider the delay raise as a "sanction" as well as an "interest because the budget income was retained and used by the debtor since the term of payment when the budget was owed".³ Others considered the delay raise as a "sanction for non-payment in due time" as well as a "compensation of the state for cashing with delay its rights".⁴

In the regulations that followed, the function of sanction was taken by the delay penalties and the other penalties and the reparatory function, by the interests.

In these circumstances a question is born: which is the juridical nature of the recently introduced non-declare penalties? The way they are calculated is similar to the interests being established in percentage rate that is reported for each day of delay at the debt that would have appeared after the declaration of the tax base.

Through the prism of these arguments we think we are in front of some financial sanctions, the generating illicit factor being the non-declaration or the incorrect declaration of the contributors' fiscal obligations. It doesn't come out from the legal text if it is applied only for the state's fiscal obligations or also for the ones due to the local budgets. Because there is a specification that they are income at the state budget, we think that this sanction can be applied only by the fiscal organs of the state regarding the debts owed to it.

From a logical-juridical point of view we doubt as for the statute of these non-declared penalties, because we can't see how they could be considered accessories to the main debts, as long as being non-declared, the main debt was not born, so it doesn't exist.

The moment the main debt is born is the one the non-declaration is found but the obligation retro-activates until the date it should have been born, according to law. In

¹ D. Petică Roman, *Dreptul finanțelor publice, Note curs*, University „Tibiscus”, Timișoara, 1998, p. 43.

² I. Gliga, *Drept financiar*, ed. carried by M.Șt. Minea, Ed. Humanitas, Bucharest, 1998, p. 187.

³ *Ibidem*.

⁴ D. Petică Roman, *op. cit.*, p. 43.

these conditions we think we are in front of a sanction but one that shouldn't be regarded as an accessory to the main debt.

As a conclusion for the role and nature of the interests related to budget debts, in the literature of speciality it was shown, in essence, that by applying them it was intended to cover a damage caused by non-payment in term of the fiscal debts, its interest having the juridical nature of a compensation for the unpicked juridical fruits.⁵

Towards these aspects we consider that the legal dispositions concerning the interests related to the fiscal debts represent an original takeover of some institutions specific for the private law in the area of the public law. This leads to the conclusion that the institution of the interest owed for the non-payment in time of the budget debts must be understood and interpreted from the perspective of the specific presented by the reports of public financial law where they are supposed to operate.

12. The interests are calculated for each day of delay, since the day immediately after the maturity term until the extinction date of the owed amount, inclusively,

If the differences coming from the correction of the taxation declarations or the modification of a taxation decision are negatives in comparison with the sums initially established, interests are due for the sum owed after the correction or modification was done, since the day immediately after the maturity until the date of its extinction, inclusively.

For the fiscal debts by enforcement till the date the minutes distribution drawing, inclusively. If the price is in instalments, the interests are calculated until the drawing of the minutes' distribution of the advance payment. For the sum that is still to be paid, the interests are owed by the buyer.

For the fiscal obligations owed by the debtor declared insolvent who has no income and followed goods, until the date of passing in separate record, according to the stipulations of art. 265.

The level of the interest is of 0,02% for each day of delay.

For non-payment at maturity of the fiscal obligations representing the taxes for which the fiscal period is annual, interests are due as it follows:

- in the fiscal year of the taxation, for the established fiscal obligations by the fiscal organ of the state or by the contributors, including the ones that are prepayments. They are calculated since the day following the maturity term until the day of the extinction or, as the case, until the last day of the fiscal taxation year, inclusively;

- for the unpaid sums of the taxation year, the interests are calculated since the first day of the next fiscal year until their extinction day, inclusively ;

- if the fiscal obligation established through annual taxation decision or year taxation declaration, as the case, is smaller than the one established by

⁵ D. Petică Roman, *Plata voluntară – mod de stingere a creanțelor bugetare în lumina Ordonanței de Guvern nr. 61/2002 privind colectarea creanțelor bugetare*, in the Annals of the Romanian-German University no. 1/2002, Sibiu, p. 228.

the prepayment decisions or the declarations registered during the taxation year, the interests are recalculated since the first day of the fiscal year following the one of taxation, at outstanding balance in relation with the annual interest established by the annual taxation decision or the annual taxation declaration, followed by a suitable regularization of the interests,

- for the interest differences to pay, according to the annual taxation decision or the annual taxation declaration, the interests are due since the next day of the maturity term prevailed by the law. In the situation of the income tax, this rule is applied only if the income declaration was registered until the term stipulated by the law. If the income declaration was registered in due time, the interest is owed since the 1st of January of the year following the one of taxation.

If, during a fiscal control procedure, the central fiscal organ establishes additional tax differences, the interests are calculated at the tax difference since the first day of the year following the one of taxation.

13. The delay penalties are calculated for each day of delay, since the day immediately after the maturity term until the extinction of the due sum, inclusively. The level of the delay penalty is of 0,01% for each day of delay. The delay penalty doesn't remove the obligation to pay the interests.

The delay penalty isn't applied to the main fiscal obligations undeclared by the contributor and established by the fiscal inspection organ by taxation decision.

The lack of discount by the credit institutions of the sums owed to the consolidated general budget in 3 working days since the debiting of the contributor's account exonerates this one from the obligation to pay the respective sums and attracts delay interests and penalties for this one, after 3 days. In order to recuperate the sums owed to the consolidated general budget and undiscounted by the credit institutions, as well as the interests and delay penalties owed by the contributor, this one can come against that credit institution.

In the case of fiscal debts extinct by compensation, the interests and delay penalties, as the case, are calculated until the date when the debts become sure, liquid and demandable, in the same time.

In the situation of the debtors for whom the insolvency procedure was opened, for the fiscal debts born before and after the date of insolvency procedure opening, interests and delay penalties are owed, according to the law that regulates this procedure. For the fiscal debts born before or after the date of the registration of the debtor's dissolution in the trade registrar, since this date no calculations are done and owed for interest and delay penalties. But, if, by definitive judge decision the document that was at the base of the dissolution's registration was disbanded, interests and delay penalties are calculated between the date of the registration in the trade registrar of the dissolution papers and the date the definitive disbanding decision

14. The penalty of un-declaration is a newly introduces institution by the dispositions of the new Fiscal Procedure Code and it is due only for the fiscal debts administrated by the state's fiscal organ. It appears like a financial sanction for the fact that the state's public budget was damaged because the fiscal obligations haven't been declared or have been incorrectly declared. Thus, for the main fiscal obligations, undeclared or incorrectly declared by the contributor / payer and established by the fiscal inspection organ by taxation decisions, the contributor/payer owes a non-declaration penalty of 0,08% per day, since the day immediately after the maturity and until the extinction of the owed sum, inclusively, from main undeclared fiscal obligations or incorrectly declared by the contributor/payer and established by the fiscal inspection organ by taxation decisions.

According to the law, the non-declaration penalty can be reduced, at the request of the contributor, with 75% if the main fiscal obligations established by decision are extinct through payment or compensation or are sequenced at payment, in the letter of the law. In such a situation, the reduction is done at the end of the sequence of payment.

But if the main fiscal obligations resulted after some facts of tax evasion have been found by the judicial organs, the penalty for non-declaration is raised with 100 %.

The application of the penalty of non-declaration doesn't remove the interests' obligation of payment and the sums resulting from its application are income at the state budget.

The situations when the non-declaration penalty is not applied are:

- if it is less than 50 lei
- if the main undeclared fiscal obligations or the ones incorrectly declared by the contributor/payer and established by the fiscal inspection organ through taxation decisions it results from the application of some stipulations of the fiscal legislation according to the interpretation of the fiscal organ, contained in norms, instructions, circulars or opinions communicated to the contributor/payer by the state's fiscal organ.

The application of the penalty sanction for non-declaration or, on the contrary, its lack of application are situations whose consignment and motivation must be done in the fiscal inspection report.

If the main fiscal obligations established by the fiscal inspection organ as a result of the taxation declaration lack of registration, only the non-declaration penalty is applied without the contravention sanction for the declaration's lack of registration.

The non-declaration penalty can't be bigger than the level of the main fiscal debt it is applied at, excepting the situations when the main obligations come from tax evasion.

15. There are situations when the contributor is entitled to a return or reimbursement of some sums of money he paid without having to. For the sums to be returned or reimbursed from the budget, the contributor has the right at interest since

the following day of the expiration of the return or reimbursement legal term until the extinction of these debts by any modality prevailed by law. The grant of interests is done at the contributor's request.

In the situation of the contributor's debts coming from the annulment of the fiscal administrative act that established the payment fiscal obligations and that have been previously extinct, the contributor is entitled to an interest since the day the extinction of the individualized fiscal debts has been operated in the annulled administrative document until the day the contributor's debt return or compensation as a result of the annulment of the fiscal administrative document.

Interests are also owed for fiscal debts that have been the object of a return request rejected by the fiscal organ but admitted afterwards and definitively by the solution body of the contestations or by the judge court.

The level of the interest is the same with the one owed to the state's public budgets and it is supported from the same budget the sums solicited by the contributor/payer are returned or reimbursed.

16. For non-payment in term of the fiscal debts due to local budgets, delay raises are calculated. Their level is of 1% from the quantum of the main fiscal obligations unpaid at term, calculated for each month or fraction of the month, since the day coming immediately after the maturity date until the date the due sum is extinct, inclusively.

For the sums to be returned from the local budget, delay raises are also owed. The level and the way they are calculated is the same, the legal dispositions being perfectly reciprocal with the ones for the debts, due and unpaid by the contributor to the administrative-territorial units.

17. We notice the way the interests were calculated is comparable with the way that were calculated at the moment of the first regulations the delay raises. Meanwhile we may see that the way the delay raises are calculated, in the light of the Fiscal Procedure Code in force is similar to the one used till now for the delay penalties. Finally, the way the delay penalties are calculated is unique because it hasn't been used at the moment of the first regulations that consecrated them.

All these ways of calculation, older or more recent, are to start a confusion for the contributors but even for the staff of the financial administrations. If we take into consideration that sometimes the interests, penalties or raises of delay must be calculated for many years from behind, we'll have a complete picture of the confusion that rules among contributors as well as among the public servants from the state fiscal apparatus.

On the other side, the analysis of the in rule regulations leads to a series of conclusions.

Thus, the first observation is that the legislator creates a juridic and sanctioning system different for the gathering of the debts for central budgets, compared to those for the local budgets. This fact can have unpredicted consequences, in any case, severe,

on the way the rhythmicity of the gathering of fiscal debts at the local budgets is assured, because the coercitive measures are mild, and of the reduction of the level of the compensations owed to the administrative-territorial units.

On the other hand, it is created the impression that inside the Romanian public budget system there are more important, first hand budgets, those of the state, and less important budgets, respectively the ones of the administrative-territorial units that the fiscal debtors can treat as such, ignoring the debts owed to the local budgets.

Enshrining in the norm plan the discriminatory juridic regime for the budgets of the local collectivities belonging to the state, the legislator seems to urge the contributors to focus on the sums they owe to the state, seeming to invite them to ignore the others, what is incorrect and we consider such a legislative behaviour even unconstitutional. That is because the fiscal regulation can be, according to the Constitution, only in the laws, in the sense of the norm documents issued by the Parliament. So, not only the fiscal tasks can be established only by law⁶, but "the formation, administration, use and control of the state's financial resources of the administrative-territorial units and of the public institutions are regulated by law⁷". In such situations it is obvious that the administrative-territorial units don't have any legislative leverage to counterattack⁸ such discriminating legal dispositions that shed inferiority on the local budgets compared to the budgets belonging to the state. The decisions of the local and districtual councils can't refer to these juridic aspects of fiscal nature.

As a plus, the Constitution again statuses the fact that the citizens have the obligation to contribute, by taxes and fees, at the public expenses.⁹

On another side, if the interests have the role of compensation and the delay penalties the one of sanction, than what is the role of the delay raises and why aren't they used in the same time?

So, as we have showed in the contents of the present work, the interests can have the quality of accessories for fiscal debts and the delay penalties, sanctions of fiscal law. However in the contents of the Fiscal Procedure Code but also in the contents of other laws with fiscal character, the syntagm *accessories of fiscal debts* is used not being very clear to which one it refers but seeming it is also about penalties and also delay raises. In these circumstances, is the term *accessory* correctly used to identify all the three juridic analysis that are analyzed. Are they, surely, in report with the main debt, namely with an interest, a fee or a social contribution owed and unpaid?

⁶ According to art. 139 line. (1) from the Constitution of Romania „the taxes, fees and any other type of incomes and any other incomes from the state budget and from the budget of the state social insurances are established only by law”, and acc. to line (2), „the local taxes and fees are settled by the districtual or local councils, in the limits and in the letter of the law”.

⁷ Constitution of Romania, art. 137 line (1).

⁸ Through some norm documents that can come from the local public authorities.

⁹ Constitution of Romania, art. 56 line (1).

Not lately, which scientific argument and of content justifies the use of interests and delay penalties in the situation of the state's central budgets and of the delay raises, in the case of the local budgets belonging to the administrative-territorial units?

Another very interesting problem in the context of the present analysis represents the way the analyzed juridical institutions are regulated as for the sums to be returned or reimbursed from the public budgets.

A first observation refers to the fact that, if the public budget is called to pay amounts of money to different physical or juridical persons, only interests are calculated, not delay penalties. This fact is explained because, as it was already shown, the delay penalties are sanctions. We can justify this thing on the light that it was not desire to accredit the ides that the state could be sanctioned, but the administrative-territorial unit because this one is obliged, in the same conditions, to pay delay raises with sanctionatory function. Thus we may notice that again a discriminatory regime is created between the state and the other administrative-territorial units inferior to this one.

Not least, we want to refer to the penalties for non-declaration. If we consider them sanctions then we can't see why the legislator regulates also the contravention sanction for the declaration non-registration, because the illicite fact is the same. Aren't we in a double situation of sanction for the same deed, even if the legislator mentions that, when the fiscal obligations are settled by the fiscal inspection organ for the lack of registration of the taxation declaration, only the non-declaration penalty is applied not also the contravention sanction. How do we proceed for the other situations? Should we apply both?

There is a series of questions that, in connection with the way the *accessories to fiscal debts* are regulated at present, seem rhetoric. The present legislative reality is, here and there, ravishing, because it seems sometimes incoherent and other times it is not funded on scientific criteria or of content. It looks like the happening and the hazard are responsible for the fact that the central budgets benefit of a regulation and the local ones of another one.

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