

GENERAL PRINCIPLES OF THE FISCAL PROCEDURE. CORRELATION OF NATIONAL LAW WITH EUROPEAN LAW IN FISCAL MATTERS

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Abstract

This paper addresses the issue of the regulations contained in the Fiscal Procedure Code regarding the general principles that must govern the conduct of the parties throughout the fiscal procedure. The enunciation and regulation of these principles produce particularly important effects, and we have referred to some of them in the content of this paper. Therefore, the paper includes the presentation, critical analysis, observations and conclusions regarding the principle of legality of the fiscal procedure applied by the fiscal bodies of the state and of the administrative-territorial units, the unitary application of the fiscal legislation on the entire national territory, the exercise of the fiscal body's right of discretion in assessing and interpreting evidence and information that may be considered relevant for the correct determination of the taxpayer's fiscal situation, the active role recognized to the fiscal body by the legislator and under which it is entitled to examine the facts, obtain and use the information and the documents it deems useful for determining the taxpayer's fiscal situation, the official language in the fiscal administration and how documents and information presented in other languages can be used, the taxpayer's right to be heard in the fiscal administration procedure and its limits according to the practice of the fiscal bodies of the Romanian state, but also in the vision of the judges of the Court of Justice of the European Union called to censor these practices, the obligation of cooperation established by the legislator exclusively in the taxpayer's charge, the maintenance of fiscal secrecy as a general obligation of the fiscal body significantly diluted by numerous exceptions, and, last but not least, good faith in the relations between the taxpayer and the fiscal body for the correct application of the legal provisions.

Keywords: principles, fiscal procedure, the right of discretion, the right to be heard.

JEL Classification: K33, K34, K40

1. Introductory considerations

The Romanian tax legislation has experienced numerous and relatively recent resettlements due to the need to be harmonize with similar regulations adopted at European level. As a result, on January 1, the new regulations codifying the material tax legislation (Fiscal Code), respectively the fiscal procedural one (Fiscal Procedure Code) came into force.

The evolution of the Romanian state fiscal bodies practice, as well as the evolution of the European court's jurisprudence, determined us to look more closely at the principles underlying the implementation of fiscal administration acts regulated in the first part of the Fiscal Procedure Code.

Therefore, the legislator has developed a series of general rules that must govern the conduct of all persons involved in the administration of taxes, fees, contributions and any other amounts due to any of the public budgets. In what comes next, we will analyze each of these principles and their legal effects, without claiming that we will be able to completely exhaust this extremely generous subject, as content and found in a continuous dynamic, in terms of understanding the effects that these regulations generate them.

2. The principle of legality

The principle of legality settles the axiomatic rule according to which fiscal receivables and corresponding obligations of the taxpayer can be established only by law. In the same time, the procedure for administering tax receivables is carried out in accordance with the provisions of the law, and the tax authority has the obligation to ensure the respect of the legal provisions concerning the realization of the rights and obligations of the taxpayer or of other persons involved in the tax procedure.²

This principle is fully in line with the provisions of Article 139 paragraph (1) of the Romanian

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²Art. 4 of the Fiscal Procedure Code.

Constitution which establishes the fact that taxes and fees may be established only by law or by legal acts that have the legal force of law³. Although the constitutional text is slightly deficient because it refers only to the law, not to normative acts with equal legal force, however, in practice it has been interpreted unequivocally in this regard, which is why the Romanian governments quickly regulated issues related to tax burdens through simple or emergency ordinances. Also, the constitutional text expressly refers only to taxes and fees, but it must be interpreted as referring to all tax burdens categories, including social contributions regulated by the Fiscal Code. The explanation for these small shortcomings of the constitutional text can be found in the antiquity of these regulations (1991 when the Romanian Constitution was adopted), but also in the fact that the constituent legislator did not "take advantage" of the 2003 Constitution revision when the vision on the fiscal and legislative system was much more clearly underlined and only small necessary corrections could have been made.

So, we believe that the regulation of the legality principle takes into account the fact that the fiscal burdens can be established only by law, in the strict sense of normative act emanating from the Parliament (as unique legislative body and the most representative public authority of the Romanian state), but also the fact that the tax procedure applied to the collection of tax claims can be only the one regulated by the Fiscal Procedure Code.

3. Unitary application of legislation

The unitary application of the legislation is that principle referring to the fact that the fiscal body is obliged to apply unitarily the provisions of the fiscal legislation on the Romanian territory, following the correct establishment of the amounts due to the public budgets.

In achieving this purpose, the legislator establishes as task for the Ministry of Public Finance, a specialized body of the central public administration, the obligation to coordinate the unitary application of the provisions of the fiscal legislation. Thus, within the Ministry of Public Finance operates the Central Fiscal Commission, with responsibilities in taking decisions concerning the unitary application of the Fiscal Code and the Fiscal Procedure Code, their subsequent legislation, as well as the legislation whose application's is ANAF's competence. If the Central Fiscal Commission is invested with solving a problem related to local taxes and fees stipulated in the Fiscal Code, the commission is completed with 2 representatives of the Ministry of Regional Development and Public Administration, as well as a representative of each associative structure of the local public administration authorities. In order to ensure the application of this principle, the decisions of the Central Fiscal Commission are approved by order of the Minister of Public Finance and are published in the Official Gazette of Romania, Part I.⁴

The doctrine also stated the corollary of this principle, according to which, "if the fiscal bodies apply a non-unitary or incorrect fiscal legislation that is the cause of a material or moral damage for the taxpayers, the fiscal bodies will be obliged to repair this damage".⁵ There is, of course, the task of the court to estimate this damage. We underline that such a conclusion is based on the practice of some important, high-ranking courts in Romania that have ruled in this regard⁶ but, unfortunately, one can't say that there is a unitary practice at national level, as it would have been desirable.

Last but not least, we mention that the doctrine also emphasized that the establishment of this principle is an expression of the principle of legal security established in the European law. This was explained as the obligation of the administration to clearly define its requirements and to respect its commitments.⁷

It is no doubt that that the principle of legal security dominates the entire jurisprudence of the

³Dan Șova, *Principiul legalității impunerii*, „Curierul fiscal”, no. 11/2013, p. 537-540.

⁴Art.5 of the Fiscal Procedure Code

⁵ Cosmin Flavius Costăș and others., *Codul de procedură fiscală. Comentariu pe articole*, Printing house Solomon, Bucharest, 2016, p.14.

⁶ Decision no. 948/R/2003 of the Court of Appeal Brașov, *Culegere de practică judiciară în materie comercială, de contencios administrativ și fiscal pe anii 2003-2004*, p. 176-177, case no. 130.

⁷Cosmin Flavius Costăș and others, *cited works*, p.15.

Court of Justice of the European Union, but as long as Romanian tax law does not explicitly establish it, it is difficult to say that it derives from the principle of fiscal law unitary application. On the other hand, we appreciate that its explicit regulation would be a must, and in the meantime, we join the voices in the doctrine of Romanian tax law seeking for solutions so that the Romanian tax administrations are bound by the respect of this fundamental principle that must govern the relations between taxpayers and tax authorities.

4. The exercise of the right of evaluation

The exercise of the right of evaluation refers to the fact that the fiscal body has the right to evaluate and interpret the relevance of certain situations or circumstances, related to the attributions and competencies of the fiscal body, but also to the legal provisions, in order to adopt the solution, it considers legal and based on the correct and complete knowledge of the facts.

In the exercise of its right of evaluation, the tax authority must take into account the opinion issued in writing by the competent tax authority to that taxpayer in the activity of taxpayers' assistance and guidance, as well as the solution adopted by the tax authority in a tax administrative act or in court, through a final judgment, previously issued, for similar factual situations to the same taxpayer. If the tax authority finds that there are differences between the taxpayer's actual position and the information taken into consideration when issuing a written opinion or a tax administrative act to the same taxpayer, the tax authority has the right to record the findings in accordance with the actual tax situation and with tax law and has an obligation to state in writing the reasons why it does not take into account the prior opinion.

The legislator also stipulates the fact that the tax authority exercises its right of evaluation within the limits of reasonableness and fairness, ensuring a fair proportion between the purpose pursued and the means used to achieve it. Whenever the tax authority has to set a deadline for the taxpayer to exercise a right or fulfill an obligation, it must be a reasonable one, in order to enable the taxpayer to exercise his right or fulfill his obligation. The term may be extended, for justified reasons, with the consent of the head of the fiscal body.⁸

We cannot go without noticing that extremely subjective notions such as "reasonableness" or "fair proportion" are used, without indicating criteria or evaluation tools, so that both the taxpayer and a body with jurisdictional powers can evaluate the way in which the fiscal body behaved in achieving this principle.

In the same time, the fact that the term can be extended only with the consent of the head of the tax authority is likely to restrict or affect the taxpayer's right to be heard, which is intended to be a legal procedural guarantee in the hands of the taxpayer who must be able to defend himself against the possible abuses of the tax authorities. Regulations of the kind are likely to damage the already fragile balance between the tax authority and the taxpayer, balance that should exist in tax law relationships. Let us remember that these legal relations are authority relations in which the fiscal body has a dominant role over the other subject of law with which it interacts, created even by its being an instrument of tax law enforcement, a role also given by the effect of the law.

5. The principle of the active role of the fiscal body

The active role⁹ of the fiscal body is that principle based on which the fiscal body is entitled

⁸ Art.6 of the Fiscal Procedure Code.

⁹ The procedural-civil law also regulates the active role of the judge in the civil process. The doctrine of civil procedural law is unanimous in appreciating that it means neither subjectivism nor any interference or any violation of the rights of the parties involved in civil proceedings. Following this argument, it must be pointed out that civil servants working in tax authorities are called upon to apply and comply with tax law, so that this principle of the active role of the tax authority (respectively of the civil servant involved) must be interpreted in the context of compliance. the taxpayer to defend himself or to administer the evidence that he considers conclusive in the correct establishment of the fiscal state of affairs that concerns him.

to examine ex-officio,¹⁰ the state of affairs, to obtain and use all the information and documents necessary for the correct determination of the taxpayer's fiscal situation. In the realization of this principle, the fiscal body must also notify the taxpayer about the rights and obligations he has during the fiscal procedure.¹¹ The tax authority must also guide the taxpayers to correctly apply the stipulations of the tax legislation in force. This guidance will also be done ex-officio, but even more so if the taxpayer so requests. As can be seen, this principle is meant to re-enforce the preventive-educational function, the fiscal activity, in general, and the fiscal control one, in particular.¹²

In the case of tax receivables administered by the state fiscal body, the active role of the fiscal body is also transposed in the elaboration and use of management procedures differentiated by classes/subclasses of fiscal risk in which taxpayers are classified on the risk analysis performed by the fiscal body.

As to this principle, we consider important to mention the case C-183/14 *Salomie and Oltean*, in which the Court of Justice of the European Union ruled in a manner that should be considered as a reference by the national tax authorities. Thus, in the decision pronounced on July 9, 2015 by the CJEU, the practice of the tax authorities NOT TO inform taxpayers about certain interpretations that were to be given to the tax law, is classified as "unfortunate". As a result, the national court decided to reduce the amount of accessories due to the public budget, precisely because of the lack of the active role of the tax authorities which, if they had assumed it, could have avoided additional costs for taxpayers.

We consider this "unfortunate" practice of the fiscal bodies also a conscious violation of the good faith principle that should govern the relations between the Romanian fiscal bodies and the taxpayers.

6. The official language in the tax administration

The official language in the tax administration¹³ is Romanian. What means that the clerks in the fiscal bodies not only speak in official circumstances just this language, but it also means that any document submitted to the fiscal body in a foreign language should have a Romanian translation certified by authorized translators.¹⁴

If petitions, supporting documents, certificates or other documents in a foreign language are submitted to the fiscal body, for which there are no authorized translators, the fiscal body will request that they be accompanied by translations into Romanian made or certified by an embassy/consular office of the state in whose official language the document was issued, otherwise they are not taken into account by the fiscal body.

When we talk about using the language of the national minorities, this is allowed in the same conditions these languages are generally used in administration¹⁵.

From this point of view, the practitioners of the fiscal law also complain about the problem of translating the European fiscal legislation into Romanian. In this regard, the constant practice of the CJEU is defending those who defend themselves by evoking the ignorance of the law because the European law has no translation into their national languages, so that the European institutions are concerned to ensure that European law is translated into all EU member states as an expression of the principle of legal security. All these aspects are also valid for European tax legislation and

¹⁰ The fiscal body decides on the type and volume of examinations, depending on the circumstances of each case and the limits provided by law.

¹¹ The notification of the taxpayers on the rights and obligations within the ongoing fiscal administration procedure is made in writing, mainly, but it can also be done verbally, on which occasion the fiscal body will draw up a note in which it will record the fulfilment of the obligation, as well as any other relevant details related to it. The note will be attached to the case file.

¹² Art.7 of the Fiscal Procedure Code.

¹³ Art. 8 of the Fiscal Procedure Code.

¹⁴ Petitions, supporting documents, certificates or documents in a foreign language submitted without being accompanied by authorized translations, are not considered by the fiscal body if it requested the translation into Romanian and the taxpayer/payer did not comply with the request.

¹⁵ According to the stipulations of Law no. 215/2001 regarding the local public administration, with the subsequent modifications and completions.

jurisprudence.

7. The right to be heard

The right to be heard¹⁶ is that principle according to which the taxpayer should have the possibility to express his point of view concerning the relevant circumstances in taking decisions by the fiscal body. There are some exceptions from that rule, stipulated by the law¹⁷ such as:

- the delay in making the decision determines a danger for ascertaining the real fiscal situation regarding the execution of the taxpayer's obligations or for taking other measures provided by law;
- the amount of tax receivables is to be changed by less than 10% of the value of the previously established tax receivable;
- the information offered by the taxpayer is accepted, given in a statement or in a request;
- enforcement measures will be taken;
- decisions regarding secondary tax obligations will be issued.

We would like to mention that it can be seriously and deeply criticized the idea itself of instituting exceptions to the principle of the right to be heard. This is a fundamental right that finds its origins in guarantee rights established by the Romanian Constitution and by the European Charter of Human Rights such as the right to defense. A restriction of the right to defense, even if it takes place in the fiscal procedure and not in the criminal process, can be equally serious, because it represents the limitation of the taxpayer's possibility to protect himself from the invasive and prejudicial intervention of the fiscal body on the person's patrimony. Thus, we believe it is useful to recall art. 53 of the Constitution which refers to the restriction of the exercise of certain rights or freedoms and which establishes that this situation can appear in a democratic society only if it is absolutely necessary and justified by the necessity to "defend national security, order, health or public morality, the rights and freedoms of the citizens, the development of the criminal investigation, the prevention of the consequences of a natural calamity, a disaster or a particularly serious sinister". We believe that it is no longer necessary to argue that we are not facing any of the particularly serious situations taken into account by the constituent legislator, so that the regulation of some exceptions to the rule of the right to be heard is unconstitutional and represents, in the same time, a violation of the right to a fair trial (procedure), in the vision of the European Charter of Human Rights.

On the other side, as a support for the above affirmations, we also analyzed the situations representing, at the eye of the fiscal legislator, exceptions to the rule of the taxpayer to be heard.

Firstly, it is difficult to establish what exactly can be a "danger to find out the actual tax situation" and how the state of danger can be evaluated. This evaluation will be subjective, so that it will be made differently depending on the person who is called to make it, that won't ensure a uniform application of the tax law. At the same time, the fact that the fiscal body, as part of the fiscal procedure and subject of the fiscal legal report, is again the one called to make an "evaluation", deepens the inequality between the subjects of the fiscal legal report, which makes us think at an excessive lack of balance between them.

Secondly, to include among the exceptions the fact that "the amount of tax receivables will be changed with less than 10% of the value of the previously established tax receivable", makes us believe it is likely to cause significant damage to taxpayers, because such a percentage applied to an important claim can make the difference between being or not being a legal entity. Therefore, we think that such a regulation is not only abusive, but even unconstitutional, because it seriously violates the property right of all categories of persons.

¹⁶ Although expressly provided by the Fiscal Procedure Code, the right to be heard also results from the constitutional stipulations regarding the fact that Romania is a state governed by the rule of law in which the rights and freedoms of citizens are guaranteed [art. 1 para. (3) of the Constitution]. Compared to these regulations, the literature of specialty has observed that the right to be heard represents a true right to defense, in the fiscal procedure (Mihai Brăgaru, *Principiile fundamentale de administrare a impozitelor și taxelor în noul Cod de procedură fiscală*, „Revista de Drept Comercial”, no. 5/2004, p. 149).

¹⁷ Article 9 para. (2) Fiscal Procedure Code.

Thirdly, the right to be heard should not be limited by the fact that enforcement measures will be taken or decisions on fiscal tax obligations are to be issued. On the contrary, these circumstances are likely to complicate the taxpayer's situation and, as such, the right to be heard must be all the more respected, because otherwise the premises for an abuse of rights are created. We remind you on this occasion that from the moment of maturity the forced execution (as well as tax decisions concerning accessories of tax receivables) can be triggered at any time, without any restrictions for the tax authority, and the taxpayer as a tax debtor can lose even the right to be heard.

Fourth, the taxpayer's hearing is considered completed in the following situations:

- the taxpayer explicitly refuses to appear at the deadline set by the fiscal body for the hearing;
- the taxpayer does not appear, for any reason, at two consecutive deadlines set by the fiscal body for the hearing.

Fifth, the exception of the absence of a hearing can be invoked by the taxpayer together when he formulates the appeal filed according to the stipulations concerning the dispute on the tax. It is, however, quite difficult to prove that the right to be heard has not been respected, as long as the tax authority is not obliged to consult the taxpayer regarding the date and time of the hearings. In order to ensure some equality of arms between the subjects participating in a tax procedure, we believe that it would have been appropriate to regulate a consultation procedure between the parties in which the taxpayer has the opportunity to demonstrate and prove the situations in which he finds himself in the objective and real impossibility to exercise his right to be heard. Such legal provisions could improve in quality the relationship between the tax authority and the taxpayer and would create real conditions for the application of the principle of cooperation between the two subjects in the tax procedure, as well.

The application of the principle of the right to be heard was also the subject of analysis in the European Court of Justice. Thus, in Case C-298/16, *Ispas* an expected was given to a legal issue concerning the consequences of information and evidence being collected and administered outside the official tax inspection procedure, without allowing the taxpayer the access to that information during the preliminary procedure. In these circumstances, the petitioners asked the CJEU to determine whether such an omission could be remedied by granting access to those documents during the court proceedings. The petitioners claimed that the tax authority should grant them, *ex officio*, automatic access to all relevant information on which basis it adopted the tax inspection report and issued the tax decisions, so that they could be subsequently challenged by the taxpayer.

The litigation was initiated by the Court of Appeal in Cluj, which asked a preliminary question to the Court of Justice of the European Union, trying to clarify whether an administrative practice to issue a decision, in charge of a private person, without allowing him access to all the information and documents the public authority took into consideration when issuing the decision that caused the damage, information and documents from the administrative, non-public file of the public authority, is compatible with the principle of respect for the right to defense.

In order to be able to answer this question, the European court had to take into account some aspects. Thus, the respect of the right to defense is a general principle of European Union law, applying when the administration intends to adopt an act causing prejudice to a person. Based on this principle, the addressees of the decisions whose interests are significantly affected should be given the opportunity to make known in a useful manner their point of view on the elements the administration intends to base its decision on. It's the obligation of the administrations of the Member States when adopting decisions falling within the scope of the Union law, even if the legislation does not expressly stipulate such a formality.¹⁸

On the other hand, although it is necessary to examine the situation in question in the light of the general principle of European Union law on respect for the rights to defense, it should be taken into account, in the same time, the autonomy of the Member States in the organization of their administrative proceedings.

Therefore, in the absence of specific legislation of the Union, the procedural arrangements

¹⁸Judgment of 17 December 2015 of the CJEU WebMindLicenses, C 419/14, EU:C:2015:832.

meant to ensure the protection of the rights conferred to taxpayers by the European Union law are established by the legal order of each Member State, based on the principle of procedural autonomy of the member states, if they are not less favorable than those applicable to similar situations of an internal nature (the principle of equivalence) and don't make it impossible in practice or excessively difficult to exercise the rights conferred by the legal order of the Union (principle of effectiveness).¹⁹ That's why the national tax authorities are not subject to a general obligation to provide full access to the file in their possession or to communicate ex-officio the documents and information on which the decision is based.

Thus, according to a settled jurisprudence of the CJEU, the general principle established in European law, to observe of the rights of the defense, is not an absolute prerogative, but may involve restrictions, provided that they effectively respond to general interest objectives pursued by the measure in question and are not, in relation to the objective pursued, a disproportionate and intolerable intervention which would infringe the substance of the rights guaranteed in this way.²⁰

In a fiscal procedure inspection and tax base procedure, such restrictions, established in national law, may, among others, be aimed at protecting the requirements of confidentiality or professional secret, which may be affected by access to certain information and documents.

However, in a fiscal inspection procedure, which tries to verify whether taxpayers have complied with their obligations in this regard, it is legitimate to expect them to request access to these documents and information in order to provide explanations. or to state their reasons from the point of view of the tax administration.

However, the effective respect of the rights of the defense requires that there is a real possibility of access to those documents and information, unless objectives of general interest justify the restriction to this access.

Concerning all these respects, the Court has held that "the general principle of the European Union law, namely the observance of the rights of the defense, must be interpreted in the sense that, in administrative procedures for inspecting and establishing the tax basis, a private person should be able to be announced, on request, the information and documents from the administrative file which were taken into account by the public authority in adopting its decision, unless objectives of general interest justify restricting access to that information and documents."

8. Obligation to cooperate

The obligation to cooperate should be a principle governing taxpayers' relation with tax authorities. As it is formulated by the legislator, it is in fact the exclusive obligation of taxpayers to support the tax authorities in determining the tax situation, both by presenting the facts known by him and by indicating the means of evidence known to him. According to the legislator, the taxpayer is obliged to take measures in order to obtain the necessary means of proof, by using all the possibilities available to him.²¹ In the sense of what was shown above, we note that this principle is established as a unilateral obligation of the taxpayer to the tax authority, without any reference to the idea of reciprocity. Such a legal provision reveals the exclusive concern of the legislator to improve the taxpayer's behavior in the tax procedure, totally ignoring the criticisms brought by the latter to the abusive behavior of the fiscal authority, often proven in the practice of fiscal law.

In explaining the content and limits of the taxpayer's obligation to cooperate with the fiscal authorities in order to establish the taxpayer's real fiscal situation, the literature of specialty has shown that the taxpayer can invoke the right not to incriminate himself (the right to silence established in criminal matters).²² We consider that it is an original and courageous thesis that could be brought in

¹⁹ Judgment of 8 March 2017, Euro Park Service, C 14/16, EU: C: 2017: 177, paragraph 36.

²⁰ To see in this regard Judgment of 26 September 2013, Texdata Software, C 418/11, EU: C: 2013: 588, paragraph 84, and Judgment of 3 July 2014, Kamino International Logistics and Datema Hellmann Worldwide Logistics, C 129/13 and C 130/13, EU:C:2014:2041, paragraph 42.

²¹ Art.10 of the Fiscal Procedure Code.

²² Cosmin Flavius Costaş and others, *cited works*, p.35-41.

the European Court of Human Rights, if an argued parallel can be made between the criminal procedure and the fiscal procedure, respectively between the situation of the accused in the criminal process and the situation of the taxpayer in the fiscal procedure.

9. Keeping the fiscal secret

Keeping the fiscal secret²³ is a principle aiming both the public servants from the fiscal body, as those not having any longer this quality. They all must keep the secret on the information they have as a result of their job tasks²⁴. The law also regulates exceptions to this rule. So, information regarding taxes, contributions, fees and other amounts due to the general consolidated budget can be transmitted:

- to public authorities, in order to fulfill the obligations provided by law, in order to establish and collect receivables of a public budgetary nature;
- to fiscal authorities of other countries, under conditions of reciprocity established by conventions;
- to competent judicial authorities;
- to any applicant, with the written consent of the taxpayer/payer about whom information was requested. Written agreement means that the agreement is issued either on paper or in electronic form, expressed in accordance with the law.
- in other cases, expressly provided by special laws.

The Fiscal Procedure Code contains at least a bizarre stipulation regarding the fiscal secret. Thus, it is stipulated that the provision of information is allowed, even beyond the exceptions stipulated above, if it does not show the identity of a natural or legal person²⁵.

First, we consider that such a regulation again infringes the fundamental principles the rule of fiscal secret is based on and the reasons why they are considered necessary in the practice of tax law in developed democratic states.

Secondly, professional and fiscal secrets are intended to protect the financial and business interests of taxpayers who are in the market in competitive relationships sometimes revealing a fierce battle for raw materials, suppliers, customers, technology or other elements that may influence the economic efficiency and the financial situation of individuals, but especially legal entities. Given the fact that tax officials may enter, during the administration of tax receivables of taxpayers, in possession of information whose disclosure could cause distortions of competition or other harm to the taxpayers, we believe that, on the contrary, the legislator should have been much more rigorous in regulating these issues related to professional secret in general and fiscal secret in particular.

Thirdly, a careful analysis of all these exceptions may lead us to the conclusion that the rule of fiscal secret is so rarely applicable that it risks to become an exception, in relation to the exceptions which, being so numerous, may become, by summing up the situations in which it applies, rules.

In this context, it shouldn't be disconsidered the stipulation according to which giving fiscal information is allowed to the taxpayer itself and to his successors²⁶. We find such a clarification important, because in its absence an absurd situation could be created for the taxpayer to oppose the rule of fiscal secret, although this principle is thought by the legislator in order to protect himself. Those called to apply the law do not always understand it in its spirit, namely that the beneficiary of this principle is the taxpayer himself, so that situations can be created as a legal text meant to protect them, to create, in fact, difficulties. On the other hand, the fact that the taxpayer's successors are also exempted from the rule of fiscal secret can be seen as a way to extend the protection of the taxpayer's

²³ Art.11 of the Fiscal Procedure Code.

²⁴ The category of information of the nature of those considered to be tax secrets includes data on the identity of taxpayers, the nature and amount of tax obligations, the nature, source and amount of income of the debtor, payments, accounts, turnovers, cash transfers, balances, receipts, deductions, loans, debts, the value of the net patrimony or any kind of information obtained from declarations or documents presented by the taxpayers or any other information known by the fiscal body as a result of the exercise of the service attributions.

²⁵ Art. 11 line (7) of the Fiscal Procedure Code.

²⁶ Art. 11 line (5) of the Fiscal Procedure Code.

financial interests, but this regulation can also be seen as an extension of the number of exceptions to the rule of fiscal secret, which only strengthens the previously expressed fear that there is a real risk that the rule will become an exception, and exceptions, due to their high number, will take the place of the rule, in the practice of fiscal bodies.

10. The good faith in the relations between the taxpayer and the fiscal body

The good faith between the taxpayer and the fiscal body is a fundamental principle for correctly applying the legal dispositions. The problem of good faith must be approached from two points of view. On the one hand, it must characterize both the interpretation and the application of the tax law, and on the other hand, it must also encourage taxpayers, but especially the fiscal bodies. The taxpayer must fulfill his obligations and exercise his rights according to the purpose for which they were recognized by law and correctly declare the data and information regarding the due tax obligations.

In turn, the tax authority must respect the taxpayer's rights in each ongoing tax receivables administration procedure.²⁷ It is the only circumstance in which the legislator also refers to the taxpayer's rights within the fiscal procedure, especially since these rights are eminently of a procedural nature meant to protect him from possible excesses of the fiscal body.

From this point of view, we consider that it occurs the problem of sanctions applicable to the exercise of the rights that the law guarantees to the two parties of the fiscal legal relationship, both material and procedural, over the internal limits of these rights.²⁸

A welcome clarification brought by the current form of the Fiscal Procedure Code refers to the fact that the good faith of taxpayers is presumed until the fiscal body proves otherwise. This legal presumption, even if it is relative, is extremely important especially in situations where the legislator sanctions the bad faith of the taxpayer.²⁹

11. Conclusions

We notice that the relatively recent changes brought to the fiscal procedural legislation do not bring the improvements that we expected and that we consider necessary in a democratic society. The fiscal legislator remains dependent on an old mentality according to which the fiscal body, in its capacity of "bailiff", is allowed anything, under the justification of "public interest in the realization and collection of public funds".

We also emphasize that the establishment of a legal procedure has a dual purpose, namely, to establish the rules according to which the debtor of the obligation must pay the obligations, but also to establish the rules and instruments of coercion allowed and especially not allowed to the creditor (beneficiary) of the obligation, so that the risk of abusive behavior is kept to a minimum.

Unfortunately, the tax legislator does not prove to be "inspired" in trying to render more efficient the activity of collecting tax and budget receivables from public funds. On the contrary, the new legislative changes allow and even encourage the abusive behavior of the tax authorities, which in practice is less and less tolerated and more and more strongly contested by taxpayers. In the face of these realities, the taxpayer can only defend himself before the fiscal courts, but they still remain shy and hesitant in fulfilling the role they have in regulating the balance between the two sides of the fiscal procedure, and "equality of arms in the fiscal procedure" still remains just an aspiration.

²⁷ Art. 12, para. (2) and (3) of the Fiscal Procedure Code.

²⁸ See the issue of abuse of law in civil procedural law (Ioan Deleanu, *Drepturile subiective și abuzul de drept*, Dacia Publishing House, Cluj-Napoca, 1988, pp. 203-222).

²⁹ For example, in the matter of joint and several liability of the company's administrator with its tax claims, if the director acted in bad faith to prevent the company from honouring its tax claims.

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