

Study Contesting the Laws in the Area of Value Added Tax in Romania

Adrian Doru Bîgioi

Abstract—Compliance with laws, in general, and tax- in particular, is a basic principle of any state. Every citizen has the obligation and in conditions are not respected, authorities may take enforcement action against him. However, there may be situations where, a taxpayer, although willing to respect the law tax, because of inaccurate terms defined therein, he is in a position to apply it incorrectly. Based on these considerations, this study proposes to determine what is the the extent of contestation fiscal rules by taxpayers in Romania, in matters relating to value added tax. To obtain these results, a study has been prepared for more than 9 years, considering complaints filed by taxpayers in Romania and settled by the competent authorities. The purpose of this study was to determine the which of value added tax rules were applied incorrectly both by taxpayers and tax authorities. Finally, the results were centralized and their analysis yields a number of conclusions that can be considered in future, both by taxpayers and tax authorities, to avoid errors.

Keywords— Certainty of Taxation, Value Added Tax, Tax Appeals, Tax Laws, Tax Authorities.

I. INTRODUCTION

CERTAINTY taxation is a basic principle of fiscal policy and state of law, is a prerequisite to ensure social stability. Itself, John Locke [2], in his famous work entitled "Two Treatises of Government", was adept the principle of stability of tax rules. By author, States must govern predetermined laws, which is not changed repeatedly and rules apply equally, both for the rich and for the poor [2]. Based on the circumstances encountered in practice, where tax law was applied differently, both by taxpayers and tax authorities, in this study we proposed to identify, on the basis of samples, which the tax rules on value added tax created problems the subjects tax legal relationship. The specific objective of this study is to determine the extent of contestation of national rules on value added tax, based on complaints filed by taxpayers and settled by the tax authorities. The findings were analyzed and conclusions were issued so that in future certainty principle is respected in imposing a higher proportion.

II. LITERATURE

Taxation concepts are presented in a series of theoretical and empirical studies but also in the tax rules. Thus, Adam

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Smith [1], too high degree of taxation, causes a high degree of evasion, taxpayers having the temptation to not pay taxes.

Scott D. Gilbert [6] from Southern Illinois University at Carbondale has prepared a paper entitled A Theory of Tax Effects on Economic Damages. In this paper, he has prepared a study they did an analysis the effect of value tax the loss of income. In order to demonstrate the mentioned, author has taken as example income from interest.

Martin B. Dickinson [5], from University of Kansas - School of Law, with other authors have developed a paper entitled Kansas Tax Act, analyzed the tax legislation drafted Kansas State, in May 2012. The authors highlighted the blurring law, making estimates of the impact on budget revenues.

Viacheslav Vladimirovich Kizilov [11] has prepared a paper entitled Violation of Tax Control Procedures by Employees of the Federal Tax Service, approached the issues of abuses committed by administrative organs of the State on mission control taxpayers.

Professor Emily Cauble [4] from DePaul University - College of Law has prepared an article entitled Was Blackstone's Initial Public Offering Too Good to Be True?: A Case Study in Closing Loopholes in the Partnership Tax Allocation Rules, approached the aspects of fiscal facilities that can benefit some American companies by forced interpretation of the law or with legal authorities.

Erik M. Jensen [7], from Case Western Reserve University School of Law has prepared an article entitled The Individual Mandate, Taxation, and the Constitution, the issues approached in the US Supreme Court in Case National Federation of Business v. Sibelius (NFIB). The author comments on the constitutionality of laws which establishes taxes charged taxpayers.

James R. Repetti [9] from Boston College - Law School, with other authors have prepared an article entitled Horizontal Equity Revisited, where They addressed issues related to the review of fiscal policies vis-a-vis the the principle of equity. They proposed a rethinking of the theory of distributive justice relating to taxes, recommending that it consider an appropriate tax burden.

Professor Sarah B. Lawsky [8], from University of California - Irvine School of Law has prepared a paper entitled Modeling Uncertainty in Tax Law, which he presented a model of compliance to fiscal discipline. By way of article, the author tries to show what factors which determines a taxpayer

to comply with tax obligations. To obtain the expected results, author has taken into account factors such as probabilistic: probability that a taxpayer be selected to verify tax, under certain errors detected by the controlling bodies in addition to its statements of income.

Avneesh Arputham [3] has prepared a paper entitled Constitutionality of Taxing Services Provided and Received Outside India, which he analyzed the constitutionality regulations issued by the Indian authorities regarding the taxation of services rendered outside India, just because the service recipient is located in India or have permanent establishment in India.

III. DATA AND RESEARCH METHODOLOGY

Subject research data were extracted from the database formally published by the National Agency for Fiscal Administration [12]. The period under study is January 1, 2004 and until April 30, 2015. In terms of research methodology were used both quantitative methods and qualitative methods. As quantitative methods enumerate: questionnaires of extracting information on types of taxes and the types of articles of rules and mathematical models specific fulfill the research objectives. As qualitative methods enumerate: analysis of information on the results obtained in the study. In order to achieve the objective of research, I do so: I is selected from the database, officially published, by the National Agency for Fiscal Administration, a sample of 14,752 complaints raised by taxpayers in the field value added tax, total of 69,518 complaints extracts, which represents 21.22 % of total complaints filed. Watched that samples are representative and the data were grouped according to the classification criteria required by the specific objectives of each issue. In further study, based on quantitative methods we estimated extent of contestation of articles in the field value added tax.

In order processing, we defined the following general empirical testing function:

-general function estimating the degree of challenge to the rules on value added tax: $f_{li}(tva_{li})$.

We define the function:

$f: \mathbb{R}^{+*} \rightarrow \mathbb{R}^{+*}$, where

$f_{li}(tva_{li})$ - is general function estimating the degree of challenge to the rules on value added tax and

$f_{li}(tva_{li}) = f(\gamma_{1i}, \gamma_{2i}, \gamma_{3i}, \gamma_{4i}, \dots, \gamma_{ni})$, where $0 \leq f_{li}(tva_{li}) \leq 100$,

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$\gamma_{1i}, \gamma_{2i}, \gamma_{3i}, \gamma_{4i}, \dots, \gamma_{ni} \in [0; m]$, $i \in [0; 49651]$

In this case, the degree of challenge to the rules on value added tax, $f_{li}(tva_{li})$, is given by:

$f_{li}(tva_{li}) = f(\gamma_{1i}) / [f(\gamma_{1i}) + f(\alpha\gamma_{2i}) + f(\alpha\gamma_{3i}) + f(\alpha\gamma_{4i}) + \dots + f(\gamma_{ni})] \times 100$, where

$\gamma_1, \gamma_2, \gamma_3, \gamma_4, \dots, \dots, \gamma_{ni}$ - is section of the contested tax

rules in the field value added tax

m – is the item number of the Law no. 571/2003 regarding the Fiscal Code, the matters raised by objectors value added tax, where $m \in \mathbb{Z}^+$, $m \in [125; 161]$;

i – tier appeal is made by taxpayers in the field value added tax.

The parameters of this function were extracted based on questionnaires.

IV. RESULTS OF THE STUDY

Following the development of the study on estimating the degree of challenge to the rules on value added tax we obtained the following results:

TABLE I
RESULTS CONTESTING TAX RULES ON VAT IN ROMANIA

Current Issue	Tax rules	Area	Number of appeals	Degree of appeal (%)
1	145	The application area the right to deduct	11,017	22.19%
2	146	Conditions for the exercise of the right of deduction	5,012	10.09%
3	128	Delivery of goods	4,458	8.98%
4	155	Invoicing	3,491	7.03%
5	134	Generating and chargeability	3,390	6.83%
6	126	Taxable transactions	3,054	6.15%
7	137	The taxable supplies of goods and services carried out within the country	1,968	3.96%
8	127	Taxable persons and economic activity	1,819	3.66%
9	160	Simplification measures	1,798	3.62%
10	141	Exemptions for operations within the country	1,687	3.40%
11	153	Registration taxable persons for VAT purposes	1,474	2.97%
12	143	Exemptions for exports or similar	1,472	2.96%
13	156	Records of operations	1119	2.25%
14	147	Tax deduction for the taxable person with a mixed regime and partially taxable person	1014	2.04%
15	129	Supply of services	924	1.86%
16	140	Quotas	912	1.84%
17	149	Adjusting tax deductible capital goods	657	1.32%
18	133	The place of supply of services	618	1.24%
19	157	The fee budget	600	1.21%
20	150	The person liable to pay tax on taxable transactions in Romania	415	0.84%
21	138	Adjustment of tax base	409	0.82%
22	152	The special exemption for small	366	0.74%
23	139	The tax base for import	313	0.63%
24	125	Definition VAT	296	0.60%
25	151	The person liable to pay tax for intra-Community acquisitions	239	0.48%
26	159	Correction of documents	209	0.42%
27	148	Adjusting tax deductible for purchases of goods and services other than capital	168	0.34%

		goods		
28	144	Special exemptions linked to international goods traffic	161	0.32%
29	161	Transitional provisions	160	0.32%
30	130	The exchange of goods or services	113	0.23%
31	132	Place of supply of goods	88	0.18%
32	136	Generating event and importation of goods	75	0.15%
33	131	Imports of goods	58	0.12%
34	158	Responsibility payers and tax authorities	35	0.07%
35	142	Exemptions for imports of goods and intra-Community acquisitions	31	0.06%
36	135	Generating and chargeability for Community acquisitions of goods	26	0.05%
37	154	General provisions relating to registration	5	0.01%
Grand total	x	x	49,651	100.00

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration [12]

The results are plotted so:

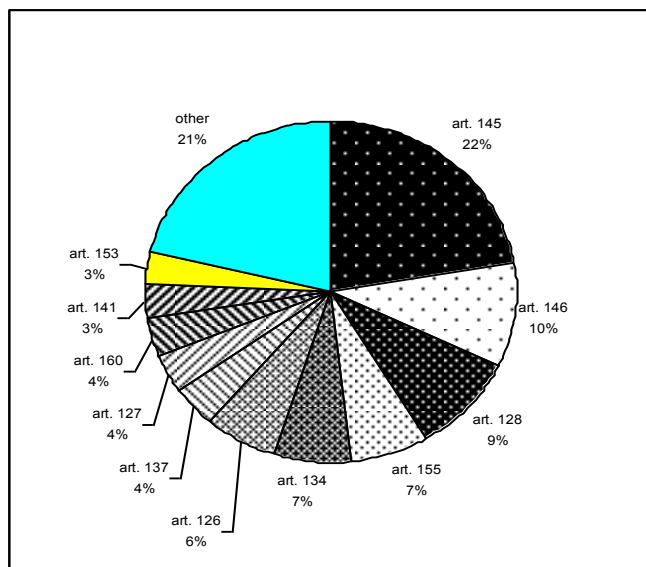


Fig. 1 Estimating the degree of contesting the tax rules provided for in Law no. 571/2003 regarding the Fiscal Code, with regard to value added tax in Romania

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration [12]

V. CONCLUSIONS

After elaborating the study, based on data extracted, resulted that articles of the Law no. 571/2003 regarding the Fiscal Code with the highest degree of contestation in the field the value added tax, are the following:

- the first place is article 145 which has a degree of contestation of 22.19 %. This article refers to application area the right to deduct and provides inter alia that every taxable person is entitled to deduct tax related to acquisitions, if they are intended for the benefit of taxable transactions or resulting from economic activities where the place of delivery /

provision is considered to be abroad, if the tax would be deductible, where these operations had been completed in Romania. From detailed analysis of the appeals, results such as the tax rules define the general title the conditions which must be met to be considered a deductible purchase, taxpayers tend to register as VAT deductible, any purchase that they consider to be made for the purpose of obtaining income. Therefore, practical applicability of tax rules taxpayers do, deciding that they purchase is deductible and which is not and verify the applicability of the rules do control authorities, this establishing the opportunity respective purchase for business taxpayers; and in this case, consider it necessary to elaborate clear fiscal rules, tax rules respective being contested by taxpayers a number of 11,017;

- next place is situated art. 146 of Law no. 571/2003 regarding the Fiscal Code, which has a degree of contestation of 10.09 %. The article in question refers to the conditions for exercising the right of deduction which provide inter alia that "... to exercise the right to deduct tax, the taxable person must meet the following conditions: for tax due or paid, on the goods that have been or is expected to be delivered or services that have been or is expected to be provided for his benefit by a taxable person to hold an invoice in accordance with art. 155 and proof of payment for acquisitions made by taxable persons which apply the VAT collection system ...";

- according to the results obtained, other rules have been contested by taxpayers are: article 128 representing the tax rules on delivery of goods, with a degree of contestation of 8.98 %, article 155 representing the tax rules on invoicing, with a degree of contestation of 7.03 %, article 134 representing tax rules on the operative event VAT and chargeability, which has a degree of contestation of 6.83 %, article 126 which is the norm tax on taxable operations, with a degree of contestation of 6.15 %, article 137 which is the norm for tax on the taxable supply of goods and supply of services effected within the country, with a degree of contestation of 3.96 %, article 127 (taxable persons and economic activity), with a degree of contestation of 3.66 %, article 160 (simplification measures) with a degree of contestation of 3.62%, article 141 is tax rules regarding exemptions for operations within the country, with a degree of contestation of 3.40%.

Based on study results, consider it necessary a clearer definition and greater stability fiscal rules in the field of value added tax, so that the principle of taxation certainty be respected, it represents a transposition of the principle accessibility and foreseeability, fundamental elements of legal security in a state of law and which enable the taxpayer to form behavior appropriate tax [10].

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