

ABOUT THE NEED TO HARMONIZE THE FISCAL REGULATIONS WITH TAXPAYERS' HUMAN NATURE

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Abstract:

The society, as a whole, is governed by rules. Some of them are transposed into legal regulations containing the pretensions and demands of society towards the conduct of its members. A society is called democratic and civilized when it meets the legal standards. The respect for rules and legal regulations in a society depends on the degree to which they are generally supported by its citizens and the ease with which they can be infringed by a citizen without he could be identified.

Taxation is one of the dynamic areas in terms of regulation, of its direct interaction with the taxpayer. In this paper we intend to evaluate the current performances of tax regulations, how they were designed and adapted to progressive stages of social development, how they managed to induce, beyond the feeling of fiscal constraint, a certain nearby to human nature in order to stimulate voluntary compliance to tax obligations and generate a sense of confidence towards the authorities.

Key words: *fiscal regulations, taxpayers, human behavior, democracy*

JED Classification: *H3, H26, K34*

Introduction

Most taxpayers in a society are law-abiding citizens, but there are taxpayers who do not respect the law, behaving with contempt for it, inducing a state of relative lawlessness in the fiscal life. The manifestation of these behaviors delay and alter the development of an economically, socially and culturally healthy society, prevents the natural processes of strengthening the culture related to taxation and deviates the potential public resources from their allocation to important purposes. At the same time, the aspirations to lawfulness and prosperity of the majority of taxpayers are also affected, as are the consolidation of the financial education and civilization of the lawabiding taxpayers and the moral values of a democratic society. Nevertheless, there are situations when institutional difficulties occur in providing the conditions that require compliance and enforcement of the law and the State, through its institutions, relaxes the strictness in law enforcement.

On the background of such situations which exacerbated some negative changes in the economic, social and institutional environment, the interest and multidisciplinary research concerning the relationships that exist and become manifest between the regulatory authorities and the taxpayer's freedom intensified.

The disappearance of the totalitarian regimes not only led to the establishment of democratic regimes, but also to the emergence of gaps in the development and application of legal rules. The evolution of the democratic regimes in post totalitarian societies in the last two decades confirms the adjustment difficulties caused by the citizens' liberation from a regime based on command and control and the perception of freedom. This explains, in part, the state of lawlessness in many European countries, including Romania,

dominated for several decades by totalitarian governments. The erosion of certain traditional indigenous values, some poor results in the field of education and the degradation of the civic responsibility, correlated with the wish to move swiftly to a certain democratic modernity created a phenomenon of relative disorder in many societies and, consequently, the expansion of acts of noncompliance and non-observance of the law.

Taxation is one of the fields which is fully reflected in the description made so far, being a very important tool for the macroeconomic adjustment, attractive for businesses in securing contracts financed under public funds, but also for taxpayers in terms of non-compliance and non-observance of the tax regulations, a situation that generates immediate income for the latter.

The state of research in the field and methodology

The specialized literature has focused and generally concentrates on the issue of the stimulatory / inhibitory effects that the fiscal policy can induce on the economic development and, as a consequence, on the role of its macroeconomic adjustment instrument. The fiscal behavior issue and the ways/ tools used for its positive modeling, the connection between them and the instruments requested in terms of effectiveness evaluation, are matters less presented and treated. This can be found in the literature, studied as forms of tax behavior (tax evasion, tax programming, tax optimization, etc) and their incidences on the size of tax revenues. But it is necessary, first, treating the fiscal behavior in terms of its modeling factors, sense that in this paper we propose to assess the effects of regulation on the dynamics of (human) tax behavior.

The paper has a certain interdisciplinary character and the methodology used is based on descriptive analysis, on the explanation of phenomena and their interactions, on induction and deduction.

The tax legislation versus taxpayer behavior

In agreement with the idea stated by Croitoru (2013) that "*in order to be beneficial, any project that concerns the society must be compatible with the human nature*", we will try to bring some arguments to support this idea and try to prove its validity within the fiscal relations as well.

The history of the recent decades shows that people feel more comfortable and more free in the democratic societies. As stated in the introduction, especially in the countries with emerging democracies and with a long socialist history, less consistent with the human nature, the perception of democracy and freedom occurred outside their boundaries. To balance this situation, the authorities have implemented a regulatory system characterized, for the most part, by command and control so as to put the wheels of freedom in motion. Over time, with the emergence and establishment of deeper democracy, people began to be aware of freedom through the desire to be respected, especially by the authorities.

This individual freedom, concentrated in the social groups, translates into a certain force, born, as Croitoru said, from the desire to be respected, that, in the medium and long term, should be an important tool for modeling the regulation, from the "*command and control*" regulation to that type of regulation which ensures transparency, induces educational effects and a greater compatibility with the human nature.

At present, at least in the former socialist societies, there is a certain gap between the people's desire to be respected and the type of regulations, meaning that people have

assimilated faster the rights and the obligations conferred by democracy, while the State registers delays in adjusting the type of regulations.

This gap is also present in the sphere of fiscal relations in general, but it is particularly present in the domestic tax interaction. The national tax authorities continue strengthening the "*command and control*" type regulation currently governing the fiscal environment, although this type of tax rules constrain and limit the need and right of the taxpayer to be respected.

This type of tax legislation is characterized by force and fear, generates the removal of the moral values of an interaction between the human society, represented, in our case, by the taxpayers, and tax institutional authority.

The degradation of the moral values of the fiscal interaction between the taxpayers and the fiscal authorities can split the taxpayers' behavior between persevering in trying to restore the moral values affected and a tendency to commit acts of corruption, as a possible way to practice tax evasion.

Trying to find some explanation for the implementation and perpetuation of this type of regulation by the tax authorities, they could be described by:

- the insufficient funding of public goods and services, leading the tax authorities to frequent changes in the tax laws, regarding the tax base expansion, the modification of some tax rates and maintaining a certain state of force, constraints and control on taxpayers;
- the stability of tax legislation acquires different dynamics, depending on the level of development; thus, in countries with consolidated economies, the legislative changes in the fiscal environment are limited to certain minimal corrections of a functional and stable system, while in emerging countries, as is the case of Romania, the modifications in the tax laws are deeper, both for a better functionality of the tax system and as a consequence of its character of principal macroeconomic adjustment tool;
- another explanation may be the time history of the relationship between taxpayers and tax authorities, quantified in accumulation and mutual experiences, that will transform into tax rules or be covered by the existing rules, increasing their effectiveness. In Romania, we consider that the history of fiscal relations between taxpayers and tax authorities actually started in 1990 and has not gathered sufficient maturity and experience, and the tax regulations are developed exclusively by the tax authorities, without even including elements resulting from experiences and accumulations.

Having in view the above mentioned / recorded on the tax regulations, in order to accomplish a more effective role in drafting or amending the tax rules, the tax authorities should start from Euripides's statement that "*there is nothing better for the state than well conceived laws*" and in order to ensure a high degree of conformation to them, should intensify the consultation with the affected subjects, ie the taxpayers.

Difficulties associated with compliance / non-compliance with tax laws

a) the applicability and interpretation of tax legislation at national level Freed from the bureaucratic maze of drawing up and adoption, the law comes into force and begins to regulate the activity or business segment which it targets. During its existence, pursuing the desideratum to which it was created for an ideal goal, namely to simplify and improve the tax environment in the society, the law applies to different situations in the life of the local tax (changing or implementing taxes or duties or envisaging an improvement of the tax noncompliance behavior). In the actual process of implementing the tax practice, it may have an impact on the cases covered, but in certain situations inaccuracies may arise that may result from an insufficient coverage of the fiscal

activities or in contradiction with the orthodox interests of the taxpayers. The occurrence of such situations within the mechanism of tax legislation enforcement and interaction with the subject or matter covered by its objective, requires an evaluation and control mechanism of appropriateness, as a mandatory feature that should resonate with any law, not only the tax one.

We note that the applicability of laws in general, and of the tax laws in particular has gained great importance in history, but especially now, aiming, on the one hand, to be administered as efficiently as possible to the economic and social realities with tax incidence, and on the other hand, to adapt to new situations created in the fiscal life.

In a first phase, tax compliance control is carried out by the competent tax authorities, namely the National Agency for Fiscal Administration (NAFA) and its subordinate services. The NAFA control actions have a competence in the application and enforcement of the existing tax legal framework so as to prevent, detect and combat any acts or tax deeds prohibited by law.

The discovery of alleged facts of breaches of tax law can be fined or, as the case may be, subject to legal action.

Here comes another control mechanism incumbent on justice, whose intervention is not against the law, but aims at improving its effectiveness. Here we analyze the correctness of the law in the context of the situation that generated a legal action and we can note the lack of fair measures with the rule of law (in the strict sense of the words and text), in which situation the spirit of the law will be applied so that its application be made with balance and fairness for the situations judged.

It can be noted that, according to the issues raised by the interpretation of the tax law, two techniques of interpretation were outlined, conforming to the meaning of law and its spirit. The interpretation of the tax law under its meaning expresses an almost religious respect for the law and it consists in that the taxpayer or tax authority must always start from the intentions of the legislature to fix the meaning and application of the tax regulations. The observability or the emergence of unanticipated particular cases at the moment of drafting / approval, which do not violate the letter of the law, but which are not sufficiently covered or explained, and can be appreciated by the judge as correct, the situation appears in which the rule of law must be overcome and its spirit discovered, that spirit that conforms to a fair measure and correctness which should be characterized by moral values.

b) The language and the complexity of tax law

The tax regulations, whether emanating from the legislature (as laws) or from the executive (in the form of decrees and decisions) whose content has an objective, submitted to the taxpayers in written expression, by publication in the Official Gazette, represent the State's tax normative messages.

The way of writing up such a fiscal message has developed and perfected over time, formed into guides for the drawing up and writing up of laws in general and tax laws in particular.

According to them, the rules of drafting tax laws, and not only, both at national and at community levels, should be clearly formulated (in an understandable and unambiguous way), straightforwardly (in a concise manner, with no superfluous elements) and accurately (leaving no doubt in the minds and interpretation of taxpayers and / or tax inspector).

One aspect often encountered in the language of fiscal rules is the polysemy, which generates the risk of misunderstanding the normative tax message being in a certain contradiction with the requirement of clear and precise expression of the tax laws. Against

this background, the concerns of the competent authorities responsible for the drawing up and writing up of the tax laws should aim to ensure a rigorous technical meaning of the terms used, so as to reduce the presence of polysemy by clearly letting appear a unique meaning, the one intended by the legislature. The firmness in the use of fiscal legal concepts does not have to lead to an abuse of definitions.

Another solution is to avoid the use, in the fiscal rule text, of the same word used in different senses, but to permanently employ it with the same meaning. This means that a concept must be designated by the same term, that monosemy, as an important requirement of the legislative technique, must reign in drawing up laws.

Another aspect related to the language of the tax laws text is the legal antinomies, defined as actual or apparent contradictions of two legislative rules, which creates difficulties, both in terms of their understanding and observance and in their compliance control. If in what concerns the contradictions arising between acts of the same level, the principle of *lex posterior* is applicable, with *priori* waiver, and in the case of contradictions occurring in laws on different hierarchical levels the principle applied is that a legal norm with superior force ceases the opposite effects of a rule which is on a lower level, some problems arise when the contradictions occur within the same act. Such situations arise as a consequence of the legislative interventions that occur in the existing legislation.

In addition to the aspects of fiscal language (the semantics of tax rules), the complexity of tax law texts complement their comprehension difficulties. This can occur in several forms in the tax legislation, namely in the methodology for calculating taxes, in the procedural and bureaucratic issues through which the fiscal compliance is achieved or in the overall compliance of tax rules, by sentence length or extent of high generalization (the syntax of tax rules).

We note that the language of tax legal rules is a compromise between the exigency of drawing up and writing up the fiscal laws and the primordial principle of understanding the message sent by the tax authority to the taxpayer, as the subject of taxation.

Achieving a high level of effectiveness of the fiscal action can be obtained by the clarity and precision of language, from the analysis and use of the most appropriate terms and expressions taking into account their current significance as well as the compliance with grammatical and spelling requirements, thus achieving and ensuring the terminology unity of the style of fiscal rules.

Some conclusions

The reforms in the national tax system focused on providing tax revenue on the dynamics of tax rates, on providing a balanced budget within the boundaries established by treaties and agreements with the international institutions, on providing an attractive tax environment for foreign investment.

Meanwhile, the taxpayers have appropriated and adapted, for the most part, the principles of a democratic society, while the tax authority has neglected placing priority on the relationship with them, being preoccupied almost exclusively with the financing issues mentioned.

The democratization of the Romanian society in general, which includes the tax environment should consider adapting the regulations to the evolution of changing human processes, increasing transparency and other changes through which the taxpayers have the opportunity to receive justice, education etc.

In view of non-implementation of procedures to simplify and streamline the tax laws, there is a risk that part of the majority of honest taxpayers feel aggrieved by the

conduct of those taxpayers who do not comply with tax regulations and the attitude of the authorities towards them, and thus migrate to another category of taxpayers.

Of course, there are difficulties to harmonize the needs of the taxpayers of a rapidly changing society with the most appropriate tax regulations. Here, not only those who develop the tax regulations and those who apply and monitor them must understand their responsibility and mission, but also those who are targeted directly or indirectly, ie the taxpayers, who must accept and understand that in a democratic society there is a direct link between democracy, freedom, law and respect for them.

Therefore, more legislative efficiency and fiscal responsibility in managing the fiscal environment are required, because sometimes the dynamic realities of the fiscal life get ahead of the complex and bureaucratic tax system. The wish and the right of the taxpayer to be respected, both as a member of the society in which he lives and as a contributor to its development and progress, force the tax authorities to transparency and fairness in the relationship and interaction with taxpayers.

References

1. Croitoru, L., (2013). *“Sfârșitul reglementării și ultimul reglementator”*, Curtea Veche Publishing.
2. Frey, B. S., Foppa, K., (1986) *“Human behavior: possibilities explain action”*, Journal of Economic Psychology, Volume 7, Issue 2.
3. Frey, B. S., (1999) *„Economics as a Science of Human Behaviour”*, Kluwer Academic Publishers, Boston/Dordrecht/London.
4. Gary, S. B.,(1998). *“Comportamentul uman o abordare economică”*, Editura ALL, Ediția a II-a, ISBN 973-571-242-3.
5. Montesquieu, (1964). *„Despre spiritul legilor”*, vol. 1, Editura Științifică.
6. Montesquieu, (1970). *„Despre spiritul legilor”*, vol. 2, Editura Științifică.
7. Orviska, M. și Hudson, J., (2002). *„Tax Evasion, Civic Duty and the Law Abiding Citizen”* European Journal of Political Economy.
8. Wenzel, M., (2007). *“The multiplicity of taxpayer identities and their implications for tax ethics”* Law and Policy, 29.
9. Wenzel, M., (2006). *“A letter from the tax office: compliance effects of informational and interpersonal justice”* Social Justice Research, 19.