

Contesting Income Tax Rules in Romania

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Abstract—The application of tax law may make it hard both tax authorities and taxpayers. This is determined by a number of factors, among which: imprecise definition of tax rules but participants in the legal and fiscal trend to interpret the law in their interest. By doing this, there were various situations in practice, which has been shown that the taxation authorities interpreted the law in order to charge higher fees as and taxpayers – to pay fees as low as possible, the latter activity being called tax optimization. Based on these considerations, this study aims to determine which tax rules on income tax which have a high degree of challenge from taxpayers in Romania and identify the causes of these complaints. To achieve these results, were used official data published by the Romanian tax authorities and the analysis was made for a period of 10 years. Finally, were issued a number of conclusions and some recommendations were made, among which: stability of the tax legislation but also more precise definition of the terms of the authorities, while respecting the principle of legality by taxpayers.

Index Terms—income tax, complaints, tax rules, tax bodies, certainty of taxation

I. INTRODUCTION

Through this study, the author aims to determine which tax rules that created most problems taxpayers activity in Romania, in income tax. Frequent changes in tax laws and inclusion in the taxable income of new but inaccurate definition of certain terms, led the author to conduct a research paper with which to determine the extent of contestation of rules in Income tax. To achieve these results, author analyzed the complaints filed by taxpayers and settled by the competent institutions, for a period of 10 years, since the entry into force of Law no. 571/2003 regarding the Fiscal Code [1]. The ultimate goal of the research was to highlight mistakes made by both taxpayers and tax authorities, so as to avoid such problems in the future.

II. LITERATURE

Taxation concepts are presented in a series of theoretical and empirical studies. John Locke [2] is committed to the principle of stability of fiscal rules, states have laws governing preset that is not changed repeatedly and rules apply equally, both the rich and the poor. Fiscal rules should be issued only for the good of the people. After Adam Smith [3], tax penalties can be up

to seizures can affect the social life of people dropping their interest to invest and create jobs. An excessive degree of tax evasion causes a large degree, taxpayers having the temptation to not pay taxes. Other tax principles addressed by the authors: stability principle of fiscal rules, according to which states have laws governing predetermined, which is not changed repeatedly, certainty principle of taxation, formulated by Thomas Hobbes [4] and abuse of tax law, formulated by a number of authors such as Aristotle [5] and Gaius [6].

Professor Steve R. Johnson [7] at Florida State University-College of Law, drafted an article entitled Not a Tax (Statutorily), But It Is a Tax (Constitutionally) examined the legality of certain acts issued by Congress, through the US Constitution. The author pointed out that, according to the Supreme Court of Justice, not constitutional regulations issued by the US authorities regarding the obligation of citizens to purchase health insurance. Authorities may impose a tax but non-coercive on people who choose not to purchase such insurance.

In the paper entitled Report: A Pathway to Fundamental Tax Reform, Dorothy A. Brown [8] at Emory University School of Law, make a critical analysis of US tax policy, highlighting the tax advantages that you have certain categories of taxpayers, compared with other categories of taxpayers. Based on the shortcomings of the current system of taxation in the US, the author proposes a simple and fair tax system.

Martin B. Dickinson [9], from the University of Kansas-School of Law, together with other authors, have developed a paper entitled Kansas Tax Act, the tax legislation drafted analyzed Kansas State in May 2012. The authors have highlighted law blur, making estimates of the impact on the budget. Vyacheslav Vladimirovich Kizilov [10] drafted a paper entitled Violation of Tax Control Procedures by Employees of the Federal Tax Service, which addressed issues of abuses committed by administrative organs of state control missions' taxpayers.

III. DATA AND RESEARCH METHODOLOGY

Subject research data were extracted from the database formally published by the tax authorities [11], being selected a sample of 5243 complaints, out of a total of 68,728 total complaints extracted, which is a percentage of total complaints filed 7.6% of the sample being representative concerned. The period for which the study was conducted is 01 January 2004 - February 28, 2015. In terms of research methodology, were used both quantitative methods and qualitative methods. As

quantitative methods are 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 are analysis, based on the results obtained in the study. In further study, we sorted the data collected and based on quantitative methods. We estimated the extent of contestation of Income tax articles.

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

General function estimating the degree of challenge to the rules, Income tax ($g_{li}(tv_{li})$).

We define the function:

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

$g_{li}(tv_{li})$ - General function is estimating the degree of challenge to the rules on income tax and is given by:

$$g_{li}(tv_{li}) = g(\beta_{1i}, \beta_{2i}, \beta_{3i}, \beta_{4i} \dots \beta_{ni}), \text{ where}$$

$$0 \leq g_{li}(tv_{li}) \leq 100,$$

$$\beta_{1i}, \beta_{2i}, \beta_{3i}, \beta_{4i}, \dots, \beta_{ni} \in [0; m], i \in [0; 7382].$$

In this case, the degree of challenge to the rules on income tax, $g_{li}(tv_{li})$ is given by:

$$g_{li}(tv_{li}) = g(\beta_{1i}) / [g(\beta_{1i}) + g(\beta_{2i}) + g(\beta_{3i}) + g(\beta_{4i}) + \dots + g(\beta_{ni})] \times 100, \text{ where}$$

$\beta_1, \beta_2, \beta_3, \beta_4, \dots, \beta_{ni}$ - is the section of the contested tax rules on income tax

m - is the item number of the Law no. 571/2003 regarding the Fiscal Code, raised by objectors in Income tax, where $m \in \mathbb{Z}^+$, $m \in [39; 95]$;

i - Tier appeal is made by taxpayers, Income tax.

The parameters of this function were extracted based on questionnaires.

IV. SURVEY RESULTS

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

TABLE I. RESULTS CONTESTING TAX RULES ON INCOME IN ROMANIA

Current Issue	Tax rules	Area	Number of appeals	Degree of appeal (%)
1	48	General rules establishing annual net income from self-employment	1265	17.14
2	7	Definitions of common terms	784	10.62
3	82	Establishing tax prepayments	655	8.87
4	86	Rules governing unincorporated associations	606	8.21
5	49	Establishing annual net income on the income rules	582	7.88
6	67	Withholding tax on investment income	514	6.96
7	77	Withholding tax on income from prizes and gambling	437	5.92
8	46	The definition of income from self-employment	329	4.46
9	83	Statement of income	227	3.08
10	41	Categories of income subject	199	2.7

		to income tax		
11	55	The definition of wages	190	2.57
12	57	Determination of income tax from wages	156	2.11
13	90	Income from abroad	141	1.91
14	53	Statement of income	137	1.86
15	79	Tax calculation and payment deadline	118	1.6
16	65	Defining investment income	117	1.58
17	71	Definitions of common terms	84	1.14
18	78	Defining income from other sources	84	1.14
19	58	The deadline for payment of tax	78	1.06
20	61	The definition of taxable income from rental and leasing	71	0.96
21	66	Establishing investment income	69	0.93
22	52	Withholding tax representing prepayments	67	0.91
23	47		58	0.79
24	45	Establishing personal deductions and lump sums	51	0.69
25	56	Personal deduction	43	0.58
26	88	Income of non-resident individuals from dependent activities	41	0.56
27	51	Establish annual net income	37	0.5
28	63	Prepayments of tax on income from rental and leasing	33	0.45
29	74	Calculation and payment of tax on income from agricultural activities	32	0.43
30	89	Other income of non-resident individuals	24	0.33
31	81	Declarations of estimated income / income norm	23	0.31
32	87	Income from non-resident individuals employed	23	0.31
33	60	Wage income tax for certain	21	0.28
34	43	Tax rates	17	0.23
35	42	Taxable income	13	0.18
36	69	Establish monthly taxable income from pensions	12	0.16
37	75	Defining income from prizes and gambling	9	0.12
38	76	Determination of net income from prizes and gambling	9	0.12
39	70	Definitions of common terms	8	0.11
40	94	Transitional provisions	7	0.09
41	64	Taxation of net income from rental and leasing	5	0.07
42	93	Declarative obligations of payers of income withholding	3	0.03
43	85	Income from property or rights that are held in common	3	0.03
Total	X	X	7302	100

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

V. CONCLUSIONS

Following the study, based on data extracted showed that the items within the Law no. 571/2003 regarding the Fiscal Code with the highest degree of deniability by the taxpayers are the following:

The first place is Article 48 which has a degree of deniability of 17.14%. This article is general tax rule in matters of general rules establishing annual net income from self-employment. According to that article, net

income from self-employment is determined as the difference between gross income and expenditure in order to achieve revenue. The article also mentions those general conditions that must meet the expenses to be deducted. Thus, they must be made within activities in order to achieve income, be justified and documented to be included in the costs of the financial year in which they were paid. After analyzing complaints filed by taxpayers showed that, while the tax rules define fairly general conditions that must be met to be considered a deductible expense, taxpayers tend to register as deductible expenses, any expense they think that they are made for the purpose of obtaining income. Since the tax authorities exercising fiscal controls, in many cases they reconsider certain expenses as deductible expenses. Also, another problem that occurs is related to the failure of the legal documents on which occurs deduction of expenses. Thus, according to the tax rules on supporting documents should mention the tax identification code of the taxpayer but in some cases it is not recorded, either through ignorance or negligence and the effects are pretty tough for taxpayers;

Next place lies art. 7 of Law no. 571/2003 regarding the Fiscal Code, which has a degree of deniability 10.62%. The article in question refers, among others, general rules for the definition of common terms, namely that are considered salary income and income from dependent activities and payments made for personal interest of shareholders. The current rules define dependent activity as any activity by an individual in an employment relationship. In practice, this rule may give rise to different interpretations. For example, a person's activity is exercised independent, as self-employed and conclude a single supply contract with a company catalog, could be reconsidered as dependent, if the conduct of business, the income beneficiary uses only the material basis of the income payer. In this case, the income of the person can be considered as a salary, which may be jointly liable with the payer of income to pay compulsory social security contributions. To clarify this situation, in 2011, was developed GEO 46/2011 amending and supplementing art. 17 of GEO 44/2008 on economic activities by authorized individuals and in art. paragraph 17 was introduced. 3, which expressly states that " natural person authorized shall not be considered an employee of third parties collaborating, even if collaboration is exclusive. " We believe that today, this definition leaves room for different interpretations and may affect the principle of certainty taxation. Defining in terms of general enough of that article may give rise to different interpretations from both the taxpayer and the tax authorities, which resulted in his challenge by taxpayers and 784 times;

According to the results obtained, other rules have been challenged by contributors are: Article 82 which concerns the determination of tax prepayments with a degree of deniability of 8.87% and Article 86 which refers to the rules on associations without legal

personality, with a degree of deniability of 8.21%, Article 49, which concerns the determination of net annual income based on income standards, with a degree of deniability of 7.88%, Article 67 which relates to withholding tax from investment income, which has a degree of deniability of 6.96%, Article 77 which relates to withholding tax on income from prizes and gambling, with a degree of deniability of 5.92%, Article 46 which concern the definition of income from self-employment, with a degree of deniability of 4.46%, Article 83 (Statement of income) with a degree of deniability of 3.08%.

Briefly, after the study revealed the following conclusions:

Amounts of compensation, calculated on the basis of average net wage per unit, received by persons whose employment contracts were terminated as a result of collective redundancies and amounts of compensation, calculated based on net average wage economy received civilian staff of the national defense, public order and national security on termination of employment or service as a result of reductions and restructuring, granted by law, were not taxable income; currently, this regulation is repealed;

Income received by insurance agencies under contract fee is taxable income for the purposes of income tax;

For certain commercial income taxpayers, the annual net income is determined based on income norms from place of work. Such activities are revenues from business taxpayers in the provision of services other than medical professions, a lawyer, notary, auditor, tax consultant, chartered accountant, securities investment consultant, architect or other regulated professions, carried out independently and in practice a trade. In such cases, the taxpayers will pay tax, not income, but income based on the rules issued annually by the Ministry of Finance;

Premiums earned by employees are wages, employers are obliged to pay social contributions related;

Equivalent travel permits granted to employees for their family members and retired former employees of the company, is wage benefits in kind and the company has the obligation to withhold tax at source and pay the corresponding social contributions;

The difference between the value of the shares at the time of their release and initial value of these shares is taxable income under the operation of disposal of these securities was made and the taxpayer has received consideration for these titles;

Obligation to calculate, withhold and pay the tax on income from agricultural activities of the company paying the income returns, given that it is specialized for the collection and processing of agricultural products to individuals;

Salaries of staff who worked on a branch of a company is taxed in Romania and not the parent country if they were incurred expenses branch;

Amounts awarded by the association of players, technicians, and Vice President of the club, first as auxiliary game and awards are earned from salaries, which several will with other wage income;

Gift vouchers provided by the company are similar advantages in wages, given that they were not granted to employees and their minor children;

Income from the transfer of players are taxable economic income;

Companies can give employees additional personal deduction in calculating income tax, provided that they have not submitted the supporting documents in accordance with the legislation in force;

Are deductible in computing taxable profit salary costs, given that a company has not provided a service contract between two related companies, and no documentation to justify these salary costs (activity reports, minutes of work acceptance, work statements, payroll);

Travel expenses are taxable in terms of income tax, if they are made in the amount prescribed by law for public institutions;

Tax on rental income is calculated after deduction of 25% applied to the gross income from rents;

Provided that a company settles allowed employees, licenses and subscriptions travel by rail, they can be considered benefits in kind received by employees, are taxed as such;

Their members and unpaid dividends until the end of the financial year are subject to tax on dividends, even if they have not been received by members;

Tax authority may issue a decision imposing early for a particular taxpayer, even if it has not received income from self-employment;

A taxpayer can not be forced to advance payments of tax revenues under lease;

Salary income tax and social contributions related must be declared and paid by the company until the 25th of the month following the tax period to which they relate;

Given that an individual sells a legal person authorized waste, it is required to withholding and pay the appropriate tax;

Benefits in kind granted to employees are assimilated wage income and are taxed as such;

While the company did not prove that workplaces operating company employees diets require the grant of protection, the value of a given hot meals daily salary employees are advantages of being taxed as such owing society including social contributions;

If there is a difference between the amount established and recorded and that declared and highlighted the plug on paying the difference adjustment is required to reflect reality;

Tax on dividends may not be a result of the financial year before finalizing and approving the financial statements;

Given that an associate different amounts of cash money not used for the purposes of society, it taxed on dividends, the transaction in question is considered withdrawal of dividends;

A company can not distribute dividends than the actual profits, associations were forbidden to raise money in hand without justification; that the company pays tax on dividends not cover the illegality of raising dividends, while the company had accounting loss;

Withdrawal from society is a partial liquidation of its assets, withdrawing associations, recording revenues from the liquidation of the legal entity, the company is oligos to withhold and pay to the state budget, tax revenues from the liquidation of a legal person;

Given that a shareholder of a company, the company borrows a certain amount, under a loan agreement and subsequently by an addendum, the company definitely dropped that amount, the question is whether the transaction in question can be assigned withdrawal of dividends, even if minority shareholders have not received that amount;

A company may be liable to pay tax on dividends, given that, following the winding operation, sold an asset below amortized accounted remaining;

Provided that the shareholder is the county council, setting taxes on dividends to net profit payments are made by the company paying withholding;

Dividend tax increase at the same pace with the rate of increase of share capital by shareholders; so if you kept the original structure of the share capital after the increase, calculation and payment of tax on dividends will be made after the same structure as the previously considered raising its;

Tax on dividends is determined in accordance with the general shareholders decision on the allocation of net income in dividends;

A company is required to pay tax on dividends and dividends unclaimed by shareholders in general limitation period.

Analyzing the results of the study, consider the need for greater stability and a clearer definition of tax rules on income tax, so they have to be understood more correctly applied, both by taxpayers and by the tax authorities. The principle of certainty of taxation should be observed in a greater extent, this being a transposition of the principle of accessibility and foreseeability.

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