

RESEARCH ARTICLE:

National measures adopted in the field of fiscal-budgetary policy to prevent tax evasion

Marilena ENE

ABSTRACT

One of objectives of the fiscal-budgetary policy regulations represents the control and prevention of tax evasion, as well as the aggressive tax planning, because these phenomena affect the budgetary revenue collection and, by way of consequence, the funding of public expenses.

Subsequent to the 2008 financial crisis, the OECD initiated a project through which they are trying to fight off the effects of these phenomena, leading to the decrease of budgetary revenue in all countries. Romania joined this international initiative and transposed into the national law certain measures meant to prevent these phenomena, but the results are not satisfactory yet.

It is clear that there is a strong connection between the fiscal and budgetary policies and instruments used by a state and the good governance, as good governance cannot exist in the absence of transparent, coherent fiscal and budgetary means, oriented towards the development of society.

KEYWORDS: *fiscal-budgetary policy, tax evasion, aggressive tax planning, value added tax*

1. Introduction

Tax evasion and the profits shifting has represented the most important causes affecting the public budget of the developing countries¹, but OECD activity proves that the same challenges also apply to the developed countries. One of the important projects promoted for this purpose is BEPS² project.

Both the fiscal as well as the budgetary policy must apply the principles of good governance³ as these policies act at national level as key factors for the improvement of citizens' life but also involve an increased responsibility from the executive power. Regarding the instruments for the implementation of the fiscal policy, one should notice that both the fiscal system as well as the administrative system for the collection of revenues must be analyzed in order to reveal the issues and to promote the legal measures necessary in order to settle the national problems identified.

Regarding the fiscal policy, the main issues to be analyzed by each EU member state are related to the transparency of fiscal information, implicitly the exchange of information between member states' tax administrations, the implementation of certain measures of fighting aggressive tax planning, in accordance with the proposed European measures, and the active fighting against tax evasion and fraud.

As mentioned in a study carried out by the OECD, a state with an underdeveloped administrative system is unable to properly

collect taxes, which unavoidably leads to a low collection level, and, instead of ensuring the development of the administrative system, the executive power often prefers to increase the rates of taxes that is easy to collect, such as the value added tax.

The Romanian national public budget⁴ is mainly made up of taxes (profit tax, income tax, property tax, VAT, excises) and social contributions.

Pursuant to the information published by the Ministry of Public Finance with regards to the execution of the national public budget, the calculation of the weight fiscal revenue in the GDP shows that in 2009, the profit tax represented 2.5% of the GDP, the income tax represented 3.5% of the GDP, VAT represented 6% of the GDP, and social contributions represented approximately 9% of the GDP.

In 2015, despite the economic growth, the profit tax dropped to 1% of the GDP, the income tax maintained its level of 3% of the GDP, and VAT and social contributions reached 8%.

In a European context, it may be noticed that Romania's case is not a singular one, as most EU states have the same public budget structure, and, in some cases, there actually is an equal sign between the income and profit tax, VAT and social contributions.

Within the European Semester procedure, Romania, as EU member state, has the duty to submit in April of each year the convergence programme for a period of three years, including the year of issuance, drafted according to the provisions of the (EC) Regulation no. 1466/1997, as subsequently amended and supplemented..

¹Dickinson, B. 09.02.2017. *Tax and good governance*, *OECD Journal: General Papers*, Vol. 2010/1, http://dx.doi.org/10.1787/gen_papers-2010-5kgc6cl2zv0q, p. 72.

²Base erosion and profit shifting, <http://www.oecd.org/tax/beps/>

³Owens, J., Carey, R. 09.02.2017. *Tax for development*, *OECD Observer No. 276-277*, December 2009-January 2010, http://oecdobserver.org/news/archivestory.php/aid/3134/Tax_for_development.html.

⁴The work uses the notion of national public budget according to the provisions in article 138(1) of the Constitution of Romania, as republished in 2003, which stipulates: "*The national public budget comprises the state budget, the state social security budget and the local budgets of the communes, cities and counties*".

The Convergence programme 2016 – 2018 provides for a set of fiscal policy measures, on the fiscal system, which can be synthesized as follows⁵:

a) decrease of certain tax rates (VAT rate from 20% to 19%, decrease of the excise for energy products) and the elimination of certain taxes (tax on special constructions, entered into force on January 1st 2014⁶ and maintained also by the Fiscal Code of 2016, but repealed starting with January 1st 2017);

b) modification of some regulatory documents by which additional fiscal public incomes to be generated (for example, until the end of 2016 a draft of law should have been approved on the taxation of oil and mine sector, but the debate has not yet been completed at this date).

Regarding the system for the administration of fiscal incomes (taxes and contributions) the following measures⁷ are proposed:

a) connecting the county administrations within ANAF to the telephonic system of granting specialized assistance to the taxpayers, with a view of improving the voluntary compliance;

b) introducing some quality standards for the services supplied and the information systems for managing the lines by the automatic issuance of the running numbers for the taxpayers;

c) adopting measures for the simplification of the administration system and collecting fiscal incomes (for example, introducing the payment of taxes, charges and contributions through cards,

developing the electronic declarations system);

d) adopting certain measures to fight against tax evasion and fraud, like the destructuring the fraudulent trading chains from areas with significant fiscal risk, continuing to enforce the regulation on fiscal lottery with the role of stimulating the issuance, respectively the requesting of fiscal receipts, performing the actions of fiscal inspection based on certain risk analysis, including in the field of transfer prices.

e) maintaining the provisions on the evaluation of the capacity of the taxable persons to perform taxable operations in the VAT area, monitoring the taxable persons registered for VAT purposes as well as adopting some legal provisions on the procedure of cancellation of registration for VAT purposes.

Regarding the budgetary policy, respectively the public expenses budget, several measures are proposed, in order to provide an efficient spending of the public funds, oriented to the social objectives, among which⁸:

a) adopting some regulatory documents in order to increase the amounts granted to the citizens in special situations (minimum income for inclusion, elimination of threshold for the quantum of the monthly indemnity, indexation of the pension point in 2017);

b) enforcing the draft of the unitary salary law, proposed by the Government.

This article also comprises a critical analysis of the primary legal provisions adopted by Romania in order to fight against aggressive tax planning and of the tax evasion.

⁵Convergence programme 2016 – 2018, http://ec.europa.eu/europe2020/pdf/csr2016/cp2016_romania_ro.pdf, 09.02.2017, p. 20.

⁶The Tax on special constructions was introduced in the Fiscal Code since 2003, in force until December 31, 2015 by the Government Emergency Ordinance no. 102/2013, published in the Official Gazette of Romania Part I, no. 703 of November 15, 2013.

⁷Convergence Programme 2016 – 2018, http://ec.europa.eu/europe2020/pdf/csr2016/cp2016_romania_ro.pdf, 09.02.2017, p. 22.

⁸Convergence Programme 2016 – 2018, http://ec.europa.eu/europe2020/pdf/csr2016/cp2016_romania_ro.pdf, 09.02.2017, p. 20.

2. Presentation of the national measures adopted in the field of fiscal-budgetary policy

As of 2014 a significant number of regulatory documents have been adopted both by ratifying some international conventions as well as by domestic regulations, which are presented herein after.

2.1. Ratification of certain international conventions and agreements

Without performing a critical analysis on text as we talk about international acts, we specify that Romania has ratified until now by the Law no. 13 of February 28th 2014, the Convention on mutual administrative assistance in the tax matters, adopted in Strasbourg on January 25th 1988 and the Protocol amending the Convention on mutual administrative assistance in the tax matters adopted in Paris on May 27th 2010, signed by the Romanian side on October 15th 2012⁹, hereinafter referred to as the "Convention".

The adopting of this law was necessary in the international context in which most of the EU member states as well as other OECD member states have ratified these documents, the granting of mutual administrative assistance in view of fighting against the actions of the type of aggressive tax planning, tax evasion of fiscal fraud being possible on the grounds of the provisions of the Convention.

According to the provisions of the Convention, the mutual administrative assistance refers to the exchange of information, assistance for collecting fiscal incomes and transmitting fiscal documents, upon fiscal authority's request.

The final purpose of ratifying this Convention is that of increasing the level of information which the fiscal authorities may obtain in order to successfully fight against tax evasion and fraud, but also of

aggressive tax planning, in the context of the intention expressed by Romania to start fiscal inspection activities also on the taxpayers having risk in the field of transfer prices.

Another important law is the Law no. 233 of October 8th 2015 on ratifying the Agreement between Romania and the United States of America for the improvement of international tax compliance and for FATCA implementation, signed in Bucharest on May 28th 2015¹⁰, hereinafter referred to as the "FATCA Agreement".

FATCA (abbreviation for *The US Foreign Account Tax Compliance Act*) was adopted by the USA in 2010 and is enforceable since July 1st 2014, being composed from multiple fiscal legislative provisions based on which the financial institutions non-resident in the USA (including for the Romanian financial institutions) have the obligation to submit, automatically, directly or through the fiscal authorities of their states of residence, financial information related to American citizens of residents having bank accounts opened with these financial institutions.

In order to secure the observance of compliance by the financial institutions, the North-American authorities provided for in FATCA that the failure to comply with this obligation shall be sanctioned with the forcing of the financial institutions non-resident in the USA to pay a tax of 30% calculated on any amounts of money obtained from the USA by the respective financial institutions by withholding.

In order for this sanction not to be applied automatically, USA Department of Treasury proposed the conclusion of bilateral agreements with the states all over the world, in which the obligations on the transmittal of financial information on the American citizens or residents are

⁹Published in the Official Gazette of Romania, Part I, no. 155 of March 4th 2014.

¹⁰Published in the Official Gazette of Romania, Part I, no. 808 of October 30, 2015.

reiterated, but also the conditions and the procedure of transmittal are included.

FATCA Agreement was signed by Romanian on May 28th 2015, but it was ratified by the Law no. 233 of October 8th 2015, being concluded under reciprocity conditions.

According to the information also existing on the website of the USA Department of Treasury, FATCA Agreement officially entered into force on November 3rd 2015.

Another international treaty having impact on fighting against the phenomenon of tax evasion was ratified by Romania by the Law no. 70 of April 25th 2016 and refers to the Multilateral agreement of the competent authorities for automated exchange of information on financial accounts, signed in Berlin on October 29th 2014¹¹, hereinafter referred to as the "Agreement".

Romania was invited to sign the Agreement by the Center for Tax Policy and Administration within OECD, after its approval within the OECD Global Forum of September 2014. This Agreement, comprising a form of agreement between the fiscal authorities and the form of the standard report was approved by the ministers of finance and the governors of the national banks of the states part of G20 group.

The provisions of these international treaties apply in concordance with the provisions of article 62 of the Code of Fiscal Procedure in force¹², providing for that the financial and credit institutions must submit on annual basis to ANAF information of financial nature regarding the accounts opened and/or closed by the taxpayers residing in the states with which

Romania has commitments by a legal instrument of international law to perform exchanges of financial information.

However, the paragraph (2) of the same article provides for that the communication procedure, the financial institutions having the obligation to declare, the information related to the taxpayers' identification, the entities not having the obligation to report and the bank accounts excluded from this obligation, are going to be provided for in an order of the minister of public finance to be issued after receiving the endorsement from the National Bank of Romania and the Financial Supervisory Authority.

This order was adopted and published in the Official Gazette of Romania on August 24th 2016¹³, which means that as of August 27th 2016 the financial and credit institutions from Romania have clear obligations on the transmittal of information on the resident taxpayers or the citizens of other states which are part to this international agreements ratified by Romania.

Regarding the exchange of information between the member states, the fact should be mentioned that the transposing of the provisions of the Directive 2011/16/EU of the Council of February 15, 2011 on administrative cooperation in the tax field and of repealing of the Directive 77/799/CEE was initially performed by Romania by the Government Ordinance no.2 of January 25th 2012 for the amendment and supplement of the Government Ordinance no. 92/2003 on the Code of Fiscal Procedure¹⁴, being

¹³Order of the ministry of public finance no. 1939 of 18 August 2016, published in the Official Gazette of Romania, Part I, no. 648 of 24 August 2016.

¹⁴Published in the Official Gazette of Romania, Part I, no. 71 of 30 January 2012, approved with amendments by Law no. 162 of 4 October 2012 approving the Government Ordinance no. 2/2012 for amending and completing the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, published in the Official Gazette of Romania, Part I, no. 691 of 8 October 2012.

applicable as of 1 January 2013, except for the automated exchange of information with the member states which entered into force on 1 January 2015.

Concretely, no clear measures of fighting against aggressive tax planning have been adopted yet, and regarding the tax evasion, the highest level is still to be found in the field of VAT. Thus, as mentioned herein above, the biggest gap in collections from VAT¹⁵, in relation to the value of the amounts due according to the legal provisions are in Romania (42.9% in 2012, 41.1% in 2013), Slovakia (38.6% in 2012, 34.9% in 2013) and Lithuania (36.5% in 2012, 37.7% in 2013). The European average is 15%.

2.2. Adopting some internal regulatory documents

In view of fighting against the tax evasion phenomenon, including in the VAT field, several measures were adopted, out of which some are to be found also at the level of other EU member states, and others are specific. A critical analysis of the provisions approving the introduction of the fiscal lottery in 2015 and the modification of the conditions regarding the payment in cash in April 2015, is going to be performed herein after.

One interesting measure to fight against tax evasion, used in other countries, is the introduction of fiscal lottery system in order to boost the request to issue fiscal receipts by consumers.

In this regard, Government Ordinance no. 10 of 28 January 2015 regarding the organization of the fiscal receipts lottery¹⁶ was adopted and then approved with amendments by Law no. 166 of 24 June 2015 approving Government Ordinance no.

10/2015 for organizing fiscal receipts lottery¹⁷.

As mentioned, the purpose of introducing this system is to fight against tax evasion and encourage buyers, individuals resident or non-resident in Romania, to require fiscal receipts in order to fiscalize the incomes of operators when purchasing products or services from Romanian operators. The first fiscal lottery was held in 1 July 2015.

It should be noted that this measure to fight against tax evasion has been adopted in several European countries¹⁸, being first introduced in Malta in 1997.

Concretely, the procedure of fiscal receipts lottery organized by Compania Națională Loteria Română S.A. involves the random drawings of certain numbers, in order to award prizes in money, to the buyers, who have to hold those fiscal receipts. Maximum 100 prizes may be granted at such drawings.

In order for a prize to be awarded, a buyer must produce a fiscal receipt which has to fulfil the conditions established by the GO no. 10/2015¹⁹ namely:

- a) the fiscal receipt to be issued by an electronic fiscal cash register operating legally;
- b) the fiscal receipt comprises all the mandatory legal information legible;
- c) the fiscal receipt has a total amount equal to the one drawn within the public lottery;
- d) the fiscal receipt is issued in the day drawn within the public lottery;
- e) the fiscal receipt was not issued with filling in the buyer's tax registration number.

¹⁵TAXUD/2013/DE/321, *Study to quantify and analyse the VAT Gap in the EU Member States 2015 Report*, p. 17, TAXUD/2012/DE/316, *Study to quantify and analyse the VAT Gap in the EU-27 Member States*, Final Report, p.21.

¹⁶Published in the Official Gazette of Romania, Part I, no. 81 of 30 January 2015.

¹⁷Published in the Official Gazette of Romania, Part I, no. 460 of 25 June 2015.

¹⁸Fooken, J., Hemmelgarn, T., Herrmann, B. 06.05.2014. *Improving VAT compliance – random awards for tax compliance*, Taxation papers, Working paper no. 51, p. 12.

¹⁹Article 6 of Government Ordinance nr. 10/2015.

The effects of these measures on the level of collections to the public national budget or on the tax evasions have not been yet published by ANAF.

In the country report of Romania for 2016, the European Commission specifies that another measure useful for fighting against tax evasion and fraud is represented by the consolidation of the rules on cash payments.

In order to eliminate the possibility of making cash payments by individuals, Law no. 70 of 2 April 2015 to strengthen financial discipline on the cash receipts and cash payments and amending and supplementing Government Emergency Ordinance no. 193/2002 concerning the introduction of modern payment systems was adopted²⁰.

This normative act amended the conditions under which payments may be made in cash, including between individuals.

The previous regulation, the Government Ordinance no. 15/1996 on strengthening the financial and currency discipline²¹, approved with amendments and supplements by Law no. 131/1996, included no reference to payments made by individuals, which allowed the movement of large amounts of money in cash between individuals obviously closely related to tax evasion²² and the underground economy.

Government's substantiation report when submitting the draft of law to the Parliament of Romania is indicative for this purpose, the fact being specified that this regulatory document was promoted also as a result of the European Commission recommendations to limit the using of cash payments and to establish more severe sanctions in case of exceeding these

thresholds, being a measure necessary in order to fight against tax evasion and fraud.

Obviously, these measures which are applied for a reduced period of time shall be analyzed from the perspective of improving the level of collecting the budgetary incomes, of increasing the degree of voluntary compliance of the citizens and diminishing the deeds of tax evasion and fraud after lapsing a reasonable period of time, at least three years of actual enforcement. Therefore, the effects shall be visible in 2019 at the earliest.

3. European perspectives on fiscal policy and tax evasion

The development of the fiscal and budgetary policies should abide by the principles of international and European good governance principles. In this context, at the European level, with regards to the fiscal policy, the concept of *good fiscal governance* was promoted. Its purpose is to adapt the good governance principles to a narrower and more technical field. In this regard, the European Council and the Commission launched the principles of good fiscal governance, which the member states must apply both in the national and European laws and in the relations with the non-EU member third countries.

Good fiscal governance supposes the compliance with the principle of transparency, in that member states must adopt the best fiscal policy measures in a transparent manner, they must be coherent and correlated to the other public policies and, furthermore, they must apply the principles of information exchange with the other member states, as well as with the third party countries. Moreover, good fiscal governance also means that upon the country must be accountable for the implementation of the fiscal policy measures and apply the principle of loyal fiscal competition, which means that the

²⁰Published in the Official Gazette of Romania, Part I, no. 242 of 9 April 2015.

²¹Published in the Official Gazette of Romania, Part I, no. 24 of 31 January 1996.

²²Rațiu, M. A. 2013. *Drept financiar public. Drept Bugetar*, Bucharest, Romania: Editura C.H. Beck, p. 28.

measures adopted must not prejudice other states' budgetary interests.

In this context, both OECD, and the European Union, proposed new concrete tax and budgetary policy measures that the states are to implement in their national laws, so as to ensure the cooperation and coordination of fiscal activities in such a way that some taxpayers can no longer take advantage of the lack of information, to the detriment of the other ones who pay their taxes, as well as to the detriment of the countries that thus lose important fiscal revenues.

Certain principles apply to the tax policy when it comes to the implementation of the fiscal good governance principles, whereas others concern the fiscal system, respectively the main tax policy implementation instrument. These two sets of principles do not overlap; but, instead, they have different sources and effects.

An important aspect that the doctrine analyzes with regards to the EU member states is the fiscal sovereignty, which is regarded as one of the fundamental EU principles, because it is unanimously accepted that the states did not transfer the fiscal competency to the European Union. By way of consequence, member states hold full sovereignty with regards to the establishment of the fiscal system, the collection of tax and duties, the enforcement of tax laws and the operation of the tax administration, as well as the prevention of tax evasion.

This principle of tax sovereignty is not explicitly mentioned in the TEU or TFEU, but it is the result of the interpretation of article 5 of the TEU, according to which the Union only holds the competencies explicitly established through the treaties and all other competencies belong to the member states, corroborated to the provisions in article 113 of the TFEU, which stipulates that the Union holds

limited competencies in the field taxation, including the regulation of indirect tax, „*if such harmonization is required to ensure the establishment and operation of the internal market and in order to avoid the distortion of competition*”.

With regards to direct tax, the doctrine states that the Union does not hold the explicit competency to issue legislative harmonization regulations, but it does have this possibility, in so far as the operation of the internal market is affected, requiring the unanimous consent of the Council (of the member states). In time, however, due to the decisions of the Court of Justice, the concept of fiscal sovereignty in the field of taxation was amended in that member states hold the sovereign right of establishing the fiscal system and the tax and duties administration system, but the national regulations must observe and comply with the EU treaties, where they do not hold „*carte blanche*”.

Moreover, the member states gradually waive fiscal sovereignty, which was affected by the duties transferred to the European Union in the fiscal field, through various European regulations, but especially through the ones established with regards to the member states' budgetary policy.

The regulations adopted in 2011 regarding the amendment of the Stability and Growth Pact, the Fiscal Compact and the 2013 ones (applicable only to the member states that adopted the Euro currency) led to a „*centralization of the budgetary policy*” within the Union, which will continue, measures being proposed to enhance the Union's supervision of the budgetary policies.

Member states are bound to take into account the principles in the Stability and Growth Pact when drafting their fiscal and budgetary policy.

In the current context, the European fiscal policy supposes, apart from the observance of the provisions in TFEU and

the enforcement of the principles regarding the harmonization of the fiscal laws, „*in order to ensure the establishment and operation of the internal market and avoid competition distortion*”, with regards to the indirect tax, as well as in the field of direct tax, the adoption of measures meant to eradicate negative fiscal competition, fraud and tax evasion, as well as the aggressive tax planning and to promote administrative cooperation between the fiscal and customs member states' authorities.

In the development of the national tax policy, member states, including Romania, must also take into account these principles and adapt their national objectives so as to integrate them.

4. Conclusions

It is clear that the government of a country must be a good manager and implement, through proper instruments, a transparent and legal fiscal-budgetary system oriented towards the development of society. Also, citizens are entitled to proper administration and good financial and fiscal governance. In this sense, Romania as an EU member state has to take all necessary measures to transpose the European principles into the Romanian legislation and to implement it in practice.

REFERENCES

1. Convergence programme 2016 – 2018, http://ec.europa.eu/europe2020/pdf/csr2016/cp2016_romania_ro.pdf.
2. Dickinson, B. 09.02.2017. *Tax and good governance*, *OECD Journal: General Papers*, Vol. 2010/1.
3. Fooker, J., Hemmelgarn, T., Herrmann, B. 06.05.2014. *Improving VAT compliance – random awards for tax compliance*, Taxation papers, Working paper no. 51.
4. OECD, *Base erosion and profit shifting*, <http://www.oecd.org/tax/beps/>
5. Owens, J., Carey, R. 09.02.2017. *Tax for development*, *OECD Observer No. 276-277*, December 2009-January 2010.
6. Law no. 207/2015 regarding Code of Fiscal Procedure, published in the Official Gazette of Romania, Part I, no. 547 of 23 July 2015 repealed the
7. Rațiu, M. A. 2013. *Drept financiar public. Drept Bugetar*, Bucharest, Romania: Editura C.H. Beck.
8. TAXUD/2013/DE/321, *Study to quantify and analyse the VAT Gap in the EU Member States 2015 Report*, TAXUD/2012/DE/316, *Study to quantify and analyse the VAT Gap in the EU-27 Member States*, Final Report.

ABOUT THE AUTHOR

Marilena Ene, PhD Candidate at the National School of Political Studies and Public Administration; External collaborator Faculty of Law, University of Bucharest, Romania.
Email: marilena.ene@ratiu.ro