

MUTUAL ASSISTANCE FOR THE RECOVERY OF TAX CLAIMS - AN INSTRUMENT FOR AN INCREASED PUBLIC REVENUE COLLECTION LEVEL

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Abstract: *The reason for the existence of regulations on the tax claims collection activity is the necessity for designing avoidance mechanisms for budgetary losses. Having in mind the business internationalization, the creation of the European economic area characterized by the free movement of people, goods, capital and labour, regulations were adopted in the European Union and the Member States having as object to combat tax evasion and, as a consequence, a more efficient tax claims collection.*

Key words: *tax claims, tax claims collection, mutual assistance.*

1. Introduction

The European Union (EU) is an economic and political organization that integrates 28 European states and covers almost the entire continent. The evolution of this organization, the principles that govern its functioning, the politics that it promotes have led to the creation of a huge economic area. EU's internal market, also known as Single Market, is based on the free movement of persons, goods, capital and labour, liberties that ensure a high mobility of labour and trade and have the ability to maintain a competitive market economy that favours full employment and social progress.

Specifically, this means that the citizens and the companies of the 28 EU Member States may carry on their activity freely, on the territory of any Member State, the role of the organization being that of creating an economic and monetary union, of consolidating the economic, social and territorial cohesion, as well as the Member States' solidarity.

Enjoying these rights, an increasing number of private individuals and legal persons carry out their activities in several Member States and try to find solutions in order to pay reduced taxes (tax fraud) or no taxes at all (tax evasion). For this reason, the Member States cooperate to combat tax evasion and fraud, but also to avoid double taxation of income and capital, a phenomenon that would discourage work and business activities. The protection of the Member States public finances is sought, but also the taxpayers' interest protection, as it is well known that high tax burden has, in the long run, negative effects on public finances.

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As shown in the EU documents, taxation is essential for the national sovereignty, as the revenue resulted from taxation allows governments to exist and operate efficiently (European Commission, 2015, p. 3). As a consequence, the Member States are free to establish their fiscal policy, to shape their fiscal system according to the priorities required by the national interest, observing, of course, fundamental principles of the EU law, such as non-discrimination and respect towards free movement within the internal market.

2. The EU Regulations concerning Mutual Assistance for the Recovery of Tax Claims

Collection is an institution in the field of voluntary or forced extinction of the tax claims, having in mind the situation where the tax creditor requests the performance of the obligation and uses coercion in case of refusal (Dascălu, Alexandru, 2005, p. 297-298). The main reason for such a special regulation regarding the tax claims collection activity is the need to design the most efficient mechanisms for budgetary loss avoidance.

Considering the importance of the ordinary income collection, in the main taxes and duties, for the success of the states' economic policies, but also to ensure the single market stability, regulations were adopted in the EU in order to ensure the "tax claims recovery", that is, regulations intended for a good collection of the public revenue.

The first forms of cooperation for the recovery of tax claims were stipulated in the Council Directive 76/308/EEC on mutual assistance for the recovery of tax claims resulted from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties. Later on, the Council Directive 2008/55/EC was adopted, on mutual assistance for the recovery of tax claims relating to certain levies, duties, taxes and other measures, that represented a codification of the former directive and the amended acts. The actions taken, although representing steps forward for an increased public revenue collection efficiency in the EU Member States, did not fully comply with the requirements of the single market evolution. Thus, the need for broadening the field of application of mutual assistance for the collection of tax claims was felt.

As a consequence, the Council Directive 2010/24/EU was adopted, on mutual assistance for the recovery of claims relating to duties, taxes and other measures, that regulates three forms of cooperation.

- *The exchange of information* upon request or without prior request, the presence in the administrative offices and participation in the administrative enquiries. The exchange of information does not include only traditional legal arrangements, such as companies, associations and foundations, but any new arrangement set up by taxpayers in the Member States.
- *Assistance for the notification of fiscal instruments*. The adoption of a uniform instrument to be used for enforcement measures in the requested member state, as well as the existence of a uniform standard form for notification of instruments relating to the claim are meant to resolve the problems of recognition and translation of instruments emanating from a member state.

- *Precautionary or recovery measures.* With regard to the previous regulations, the right to request the application of precautionary or recovery measures in another member state was extended.

The Directive sets up the general obligation to communicate requests and documents in a digital form, via an electronic network, with precise rules on the use of languages for requests and documents. At the same time, the Directive regulates the taxpayer's right to *contest* the debt instrument, the claim, as well as the notification made by the requested state, contestation that suspends the enforcement.

Whereas the enforcement implies costs, the directive regulates the right of the requested state to recover the costs related to recovery from the debtor. Moreover, the provisions related to the suspension, interruption or prolongation of the periods of limitation are mainly determined according to the laws of the requested state.

Each member state has the obligation to inform the Commission annually of the mutual assistance carried out, and the Commission reports, every five years, to the European Parliament and the Council, on the operation of the arrangements established by this Directive.

The Member States have the obligation to transpose, in their national legislation, the provisions of the Directive by December 31st 2011, so that, from January 1st 2012, the arrangements become operative.

3. The Romanian Regulation on Mutual Assistance for The Recovery of Tax Claims

3.1. Scope of Application

The fiscal juridical relationships/reports are social relations that arise, are modified and become extinguished in the collection process of taxes and duties from private individuals or legal persons that have income or taxable or dutiable assets (Ciobanu, 2016, p. 21). According to article 152(1) of the Tax procedure code, the collection of the tax claims represents all activities that have as object the extinction of the tax claims. The collection of the tax claims is regulated in the Romanian legislation by the Tax procedure code, at Title VII - "Collection of tax claims".

Tax claims represent property rights that, according to the law, arise from relationships governed by substantive tax law, such as the right to collect any amount due to the consolidated general budget, representing principal tax claims and ancillary tax claim. The principal tax claim is the right to charge taxes, duties and social contributions, as well as the taxpayer's right to the refund of amounts unduly paid, and to the repayment of the due amounts, in the situations and conditions provided by the law. The ancillary tax claim is the right to charge interest, penalties or additional charges of principal tax claims, as well as the taxpayer's right to charge interest, subject to the conditions laid down by law. The tax claim right and the correlative tax burden arise when, according to the law, the taxable amount that generates them is constituted, or when the taxpayer/payer is entitled, as per the law, to request a refund. Under these conditions, the right of the tax body to establish and determine the due tax burden arises, or the right of the taxpayer/payer to request a refund. The tax claims are

extinguished by payment, compensation, compulsory enforcement, exemption, cancellation, limitation and by other means specifically stipulated by the law (Ciobanu, 2016, p. 24-26).

When taxpayers do not voluntarily comply with their tax obligations, the tax bodies take recovery measures for the tax claims, using the methods regulated by the legislation. As a member state of the European Union, Romania has transposed in its national legislation the provisions of the European Union Council Directive 2010/24/EU, laying down new mechanisms for an increased public revenue collection level, not only in Romania, but also in the other EU Member States.

Thus, the regulation of these mechanisms of administrative cooperation is found in the Tax procedure code, at Title X - "International matters", Chapter II titled: "Mutual assistance for the recovery of claims relating to taxes, duties and other measures".

According to article 310 of the Tax procedure code, the rules regulate the assistance regarding the recovery, in Romania, of claims established in another EU member state, as well as assistance regarding the recovery, in another EU member state, of claims established in Romania, and is applicable, as per article 311(1) and (2), to the following claims:

- a)** all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the European Union;
- b)** refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including sums to be collected in connection with these actions;
- c)** levies and other duties provided for under the common organisation of the market for the sugar sector;
- d)** administrative penalties, fines, fees and surcharges relating to the claims above-mentioned, for which mutual assistance may be requested, that are imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities;
- e)** fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties;
- f)** ancillary tax obligations and costs related to claims for which mutual assistance may be requested.

The regulations for Title X, Chapter II of the Tax procedure code are not applicable to:

- a)** compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law;
- b)** duties that are not part of the categories referred to in letters d) to f);
- c)** dues of a contractual nature, such as consideration for public utilities;
- d)** criminal penalties imposed on the basis of a public prosecution or other criminal penalties.

3.2. The Competent Authority

The Romanian competent authority for mutual assistance is the National Agency for Fiscal Administration (NAFA), institution subordinated to the Ministry of Public Finance, as well as the Agency for Payments and Intervention in Agriculture (APIA), subordinated to the Ministry of Agriculture, depending on the type of claim. APIA has a central body, 42 district centres and 266 local centres through which it runs, since 2007, European funds for the implementation of support measures, financed by the European Agricultural Guarantee Fund (EAGF).

By order of the NAFA president, the central liaison office is assigned, that is responsible for the contacts with other Member States regarding mutual assistance for the recovery of tax claims, as well as for the contacts with the European Commission. By the Order no. 197/2018 on the organization and functioning of the Central liaison office for the contacts with other states regarding mutual assistance for recovery, as well as with the European Commission, the Service for the Regulation and Recovery of Budgetary Claims was assigned, through interstate collaboration within the National Agency for Fiscal Administration - The General Directorate for the regulation of budgetary claims collection, as Central liaison office for contacts with other states regarding mutual assistance for recovery, as well as with the European Commission, in accordance with the stipulations of the Tax procedure code. NAFA has the obligation to inform the European Commission and the other Member States with regard to the appointment of the central liaison office.

3.3. The forms of the mutual assistance for recovery of tax claims

The forms of mutual assistance for recovery of tax claims regulated by the Tax procedure code are: exchange of information, assistance for the notification of documents and precautionary and recovery measures.

▪ Exchange of information

The Tax procedure code regulates the supply of information upon request, the exchange of information without prior request, the presence in administrative offices and participation in administrative enquiries.

Thus, at the request of the applicant authority, the requested authority provides any information which it deems relevant for the applicant authority, in the recovery of the claims set out in the Romanian Tax procedure code. For the purpose of providing that information, the requested authority arranges for the carrying-out of any administrative enquiries necessary to obtain it.

As far as the exchange of information without prior request is concerned, the Tax procedure code regulates the situation where a refund/reimbursement of taxes or duties, other than value-added tax, towards a person established or resident in another member state, the member state from which the refund is to be made may inform the member state of establishment or residence of the upcoming refund/reimbursement.

By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the requested authority, officials authorised by the applicant authority may, with a view to promoting mutual assistance for the recovery of tax claims:

- a) be present in the offices where the administrative authorities of the requested member state carry out their duties;
- b) be present during administrative enquiries carried out in the territory of the requested member state;
- c) assist the competent officials of the requested member state during court proceedings in that member state.

The agreement may provide that officials of the applicant member state may interview individuals and examine records, if the legislation in force in the requested Member States allows it.

▪ **Assistance for the notification of documents**

At the request of the applicant authority, the requested authority notifies to the addressee/taxpayer all documents and decisions, including those of a judicial nature, related to a claim or its recovery, emanating from the applicant member state. The request for notification must be accompanied by a standard form containing at least the information stipulated by article 317(2) of the Tax procedure code. The requested authority immediately informs the applicant authority of any action taken on its request for notification and, more especially, of the date of notification of the document to the addressee. Notification in the requested member state is carried out in accordance with the national laws and administrative practices in force.

▪ **Precautionary and recovery measures**

At the request of the applicant authority, the requested authority recovers the claims which are the subject of an instrument permitting enforcement in the applicant member state, upon condition that the applicant authority had applied the appropriate recovery procedures available in the applicant member state, except in the following situations:

- a) when it is obvious that there are no assets for recovery in the applicant member state or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested member state;
- b) when implementing such procedures in the applicant member state would give rise to disproportionate difficulty.

Moreover, the applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement in the applicant member state are contested in the respective member state. Nevertheless, upon request from the applicant authority, the requested authority takes the necessary precautionary measures (Haas, 2008, p. 19), if these are allowed by its national law, and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the applicant member state is contested at the time when the request is made, or where the claim is not yet the subject of an instrument

permitting enforcement in the applicant member state, in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant member state.

Any request for recovery is accompanied by a uniform instrument permitting enforcement in the requested member state. This uniform instrument reflects the main content of the initial instrument permitting enforcement, and constitute the sole basis for the precautionary and recovery measures taken in the requested member state and it shall not be subject to any act of recognition, supplementing or replacement.

For the purpose of the recovery of the claim in the requested member state, any claim with respect to which a request for recovery has been made is treated as if it was a claim of the requested member state and the latter shall recover the claim in its own currency. From the date on which the recovery request is received, the requested authority charges interest for late payment, in accordance with the laws in force in the requested member state. In Romania's case, the provisions of article 174 of the Tax Procedure Code are applicable. The requested authority may, where the laws in force in the requested member state so permit, allow the debtor time to pay or authorise payment by instalment and it may charge interest in that respect. The requested authority shall subsequently inform the applicant authority of any such decision. The requested authority transfers to the applicant authority the amounts recovered with respect to the claim, as well as the interest.

There is a mutual information obligation, for a good performance of the recovery procedures. Thus, the applicant authority is under the obligation to notify the requested authority on any relevant information relating to the matter which gave rise to the request for recovery, and the requested authority informs the applicant authority on any action it has taken on the request for recovery.

The Romanian requested authority is not under the obligation to grant assistance if the initial request for assistance is made with respect to claims which are more than 5 years old, dating from the due date of the claim in the applicant member state, to the date of the initial request for assistance (Dragodan, 2014, p. 60). At the same time, a member state is not under the obligation to grant assistance if the total amount of the claims for which assistance is requested is less than EURO 1.500.

3.4. Costs related to Recovery

The requested authority seeks to recover and retain from the debtor the costs linked to the recovery that it incurred, in accordance with the regulations in force of the requested member state. The Member States renounce all claims on each other for the reimbursement of costs arising from any mutual assistance they grant each other, pursuant to this chapter. However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree specific reimbursement arrangements.

At the same time, the applicant member state remains liable to the requested member state for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument

permitting enforcement and/or precautionary measures issued by the applicant authority are concerned.

3.5. Standard Forms, Means of Communication and Language

The requests for information, the requests for notification, the requests for recovery or the requests for precautionary measure shall be sent by electronic means, using a standard form, unless this is impracticable for technical reasons. As much as possible, these forms shall also be used for any further communication with regard to the request. Moreover, the uniform instrument permitting enforcement in the requested member state and the other documents shall also be sent by electronic means, unless this is impracticable for technical reasons. Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means, unless this is impracticable for technical reasons.

The standard forms and uniform instruments permitting enforcement shall be sent in the official language or in one of the official languages of the requested member state, or shall be accompanied by a translation into one of these languages.

3.6. Reporting Obligation

Romania, by the agency of the Central liaison office, informs the European Commission annually, by March 31st, of the following:

- a)** the number of requests for information, notification and recovery or for precautionary measures which it sends to each requested member state and which it receives from each applicant member state each year;
- b)** the amount of the claims for which recovery assistance is requested and the amounts recovered.

4. Conclusions

We can't overlook the fact that the business internationalization, the mobility of labour force and capital have, apart from obvious positive effects, also negative ones, such as avoidance to pay taxes and duties or tax evasion, that negatively affect the states' public revenue. That is why the states and the international organizations, including the European Union, try to find solutions in order to correctly assess due taxes and duties, so as to avoid double taxation (Ciobanu, 2017, p. 62-73) and to perform a better collection of public revenue.

That is the background for the adoption, within the EU, of several regulations regarding administrative cooperation in the taxation field, including the collection of tax claims, cooperation that consists of information exchange, support in finding new information, for the notification of documents, for taking precautionary or recovery measures.

In the matter of the efficiency of the measures regulated by the European laws

transposed in the Member States' legislation, including Romania, the conclusions of the European Commission's Report for the European Parliament and the Council regarding the operation of the arrangements laid down by the Directive 2010/24 /EU (European Commission's Report, 2017, p. 12), we consider them to be eloquent.

- The legislation and the EU framework concerning assistance for the recovery of duties and taxes have facilitated the assistance between the EU Member States.
- In order to guarantee the efficiency of the mutual assistance for recovery, Member States should consolidate their national taxes and duties recovery systems and allocate enough resources so as to solve the recovery assistance requests.
- The possibility to improve different aspects (legal and technical) of the system's functioning may also be envisaged, together with the Member States and other interested parties.
- Enhancing the communication in order to explain and promote this legislation would contribute to an increased level of observance of the tax rules and the taxpayers' rights.
- The recovery of taxes and duties is and remains difficult in the case of organised tax fraud perpetrated by private individuals or legal persons: the private individuals who perpetrate fraud or create fraudulent fiscal structures vanish and move their assets: the legal persons organize their insolvency and also move their assets. As a result of the international exchange of information, the assistance for recovery between EU and third countries shall become an increasingly important matter.

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