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THE STRUCTURE FOR A NEW CHARTER OF THE TAXPAYER IN ROMANIA

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Abstract: The constitutional provisions of each country are those that lay the foundation for the relationship between taxpayer and tax administration. Although currently, in Romania there is a taxpayer's charter which stipulates rights and obligations in relation to the tax administration, in international tax practice are found Charter models designed to offer through a significant number of articles all elements necessary to ensure a real partnership between the state and the taxpayer. Thus, through this article we propose the structure of Romanian taxpayer charter, which provide in a centralized manner all information in order to ensure efficiency, effectiveness and equity in the tax area.

Keywords: taxpayer, tax administration, rights and obligations, fiscal performance, tax fairness

1. Introduction

For a substantial and relevant analysis on taxation area is always required considering the relations of dependence and interdependence between components of the tax system, respectively the tax law, the fiscal mechanism and fiscal institutions. Thus, all actions in this area will be based on well-defined principles, unitary treatment, transparency and respect, efficiency and effectiveness, all of these being considered core values designed to strengthen the role and place of taxation in the life of any nation.

Success of the actions in the field of taxation depends very much of the existence and orderly functioning of the partnership between the taxpayer and tax administration. Considering these aspects and the fact that in Romania are often negative remarks on the fiscal area, in this article we want to emphasize the role that the Charter of taxpayer may have on the existence and action of the partnership between tax authorities and taxpayers. Although Romania has a Charter of taxpayer, we consider it necessary rethinking its structure and contents, basing on the best practices, in such a way that, compliance with the provisions of the Charter by all those involved in the fiscal area to provide for taxation the quality of factor for stimulating economic growth and development.

2. The necessity of a new Charter of the taxpayer in Romania

Specialized literature offers a number of studies and research on the behavior of taxpayer that highlight, on the one hand the factors that influence negatively this behavior, and on the other

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hand actions that may be taken in order to insure an adequate fiscal climate. In this regard it is noted: variables with positive influence on voluntary compliance are transparency in the formation and use of public financial resources, respect from the fiscal institutions, the correctness of actions taken by fiscal institutions (Hofmann, Hoelzl and Kirchler, 2008); in an antagonist fiscal climate, tax administration will be perceived as an institution that works against taxpayer, while in a synergistic fiscal climate this will be perceived as an institution acting for the taxpayer, offering him services (Kirchler, Hoelzl and Wahl, 2008); a tax system instability causes major changes in fiscal behavior (Alm, 2014); proper application of tax laws would have a significant impact on the equitable economic development (Tanzi, 2014); a well-established relationship between taxation and social benefits may influence the efficiency and effectiveness in the field of taxation (Koettl and Weber, 2014).

Therefore, resulting the necessity of a Charter of taxpayer to present clearly and synthetic the rights and obligations of taxpayers in relation to fiscal administration, as well as the rights and obligations of the tax administration in relation to taxpayers, on the basis of equality before the fiscal laws and efficiency in the collection and administration the budgetary revenues.

The reasons which led to propose a new Charter of Romanian taxpayer are:

- The Charter of taxpayers that currently exist in Romania has been designed in 2010 based on the need for a balance between the mission of the tax administration and taxpayer expectations, on mutual trust and respect for law. Thus, in the content of the Charter three relationships are identified, namely: a tax administration that simplifies the life of the taxpayer - the taxpayer citizen; a tax administration that respects the taxpayer and his rights - a taxpayer cooperative; an equitable tax administration - a loyal contributor (NAFA, 2010). Even if these relationships are well defined and even if have been implemented measures aimed to contribute to the improvement in the tax area, practice shows that still are enough negative aspects regarding the collection of taxes, the degree of voluntary compliance, the tax evasion level, the efficiency of control, the use of public funds.
- Romanian taxpayer rights and obligations during the tax audit are found in another Charter (NAFA, 2004a), without referring to the partnership that must exist between taxpayer subject to tax audits and the institution with responsibility for fiscal control.
- The fiscal information necessary for any taxpayer who operates in Romania are found in the contents of tax laws, in publications and on the official website of the tax administration, in publications and on the official websites of other public institutions with responsibility for fiscal and budgetary area. The large number of legal regulations concerning taxation, frequent changes in tax legislation, using of some specialized terms without explaining them, a declarative system with multiple changes ... are some elements showing that a

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Romanian taxpayer is in a labyrinth tax sometimes very difficult to understand.

Considering the matters above, we propose drafting a new Charter of the taxpayer, designed to synthesize all the fiscal information that any taxpayer (resident or nonresident) needs when he wants to carry out business activity in Romania, in view of respecting the fiscal legislation.

3. The structure and content of a new charter of the taxpayer

Based on a study conducted in 41 countries (which collectively representing over 80% of world GDP) on the rights and responsibilities of a taxpayer, the Confédération Fiscale Européenne (CFE), the Asia-Oceania Tax Consultants' Association (AOTCA) and the Society of Trust and Estate Practitioners (STEP) have developed A Model Taxpayer Charter, to improve the quality and effectiveness in the fiscal area (Cadesky, Hayes and Russell, 2016).

Based on this model and considering the particularities of Romania taxation area, we propose a new Charter of the taxpayer in Romania, with the following content:

- *Article 1: Purpose and role.* Charter's priority goal must be to promote partnership between the State and the taxpayer, based on trust, respect and responsibility, considering the rights and obligations of those involved in the field of taxation. The information contained in this item may refer to: the fundamental rights, freedoms and duties of citizens (Romanian Constitution, 2003); the role of public finances (Law no. 500, 2002); vision, mission, principles, values and objectives of the tax administration (NAFA, 2012).
- *Article 2: Definitions.* By defining specialized terms used in the Charter prevents misinterpretation of them, both by taxpayers and by the tax administration staff.
- *Article 3: The coverage.* Charter must establish the legal framework regarding, on the one hand the rights and obligations of the taxpayer, and on the other hand, the rights and obligations of the tax administration. In this regard, it must establish clear typology of the taxpayer and presentation of all relevant institutions in taxation sector, including independent fiscal institutions, specifying for each role, mission and objectives, rights and obligations.
- *Article 4: Principles.* Any partnership relationship implies the existence of clear principles and the requirements that are necessary for conducting the activity under optimal conditions. From this perspective, the principles of the Charter should consider: taxation principles (Hora, 2004); the link between tax compliance and tax morality (Torgler, 2007); interdependence between ethics and tax compliance (Alm and Torgler, 2011); professional ethics and deontology in the tax area (NAFA, 2004b).
- *Article 5: The components of the tax system.* Taking into account tax legislation, tax mechanism and fiscal institutions, through information contained in this item, taxpayers will understand: differences between direct taxes and indirect taxes; the significance of the technical elements of taxes; way of formation of

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public budget as a result of payments to the state budget, local budgets, state social insurance budget and special funds budgets.

- *Article 6: Fiscal registration.* Through information in this item, taxpayers will know: who is subject to the fiscal registration; when and where must be carried out fiscal registration; what forms are used for fiscal registration; how to assign fiscal residence; which is the fiscal regime for residents and nonresidents.
- *Article 7: The declarative system.* A natural person or a legal person with the status of a taxpayer is required to prepare and submit tax returns, whereby, fiscal institution will know the value of taxable goods, the amount of taxable income and related taxes. Thus, through this item should be specified the types of tax forms and timing of tax liabilities.
- *Article 8: The tax audit.* Regardless of the nature (technical, economic, financial, fiscal, customs, etc.) control activity monitor compliance with data requirements in the field concerned, usually through specific legislation. Tax audit should be a factor that contributes to maintaining fiscal activity in normal situation, to solving with intelligence and competence issues regarding compliance with tax legislation, to the development and improvement of fiscal domain, in terms of actual effectiveness. Characterized by determination, ambition, objectivity, transparencies and fair treatment, the tax audit is an effective tool of fiscal management. Based on these considerations, through this item, are offered to taxpayers information on: the role and functions of tax audit; manner of exercise of the tax audit; rights and obligations of the taxpayer subject to audit; rights and obligations of the specialist inspector with responsibility for fiscal control.
- *Article 9: Contesting the decisions of fiscal institution.* The right to contesting the decisions of fiscal institution is one of the fundamental rights of taxpayers. What decisions can be contested? When can be contesting the decisions of fiscal institution? What are the items to include in a complaint? Where to submit the complaint? Who resolves the complaint? ... These are some questions for which taxpayers often seek an answer. Thus, this item may be offered synthetically pertinent answers for aspects concerning contesting of fiscal institution decisions.
- *Article 10: Taxpayers assistance.* Considering the complexity of the taxation area, the significant changes in tax laws depending on local, national and international framework, fiscal administration has the responsibility to provide taxpayers and tax consultants specialized assistance. Along with forms, guidelines and instructions, the fiscal administration should have experts who can provide advice involving complex issues of taxation area. Through this

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item, taxpayers can be informed about the ways in which, the fiscal administration provide assistance for individuals and corporate taxpayers.

- *Article 11: Services offered by the fiscal administration.* Often, taxpayers perceive fiscal administration through the prism of obligations concerning payment of taxes and tax audit activity. For this reason, any institution with responsibilities in taxation must focus its whole activity toward taxpayers and consider him a client to provide quality services. Thus, through this item it is presented both the catalog of services provided to taxpayers and also how the fiscal administration shall report performance in relation to services provided.
- *Article 12: Financial and accounting documents.* Taxpayers are required to keep financial and accounting documents which attest conduct of business, respectively the movement of elements from the patrimony and recording the result. For fiscal administration, these documents provides all information related to tax liability of the taxpayer, which is why, this item specifies manner of storing and storage period for the main financial documents.
- *Article 13: Decisions of the tax administration.* All addresses, press releases, decisions issued by the fiscal administration and tax law interpretations must be made so as to avoid acts and facts of tax evasion. In this sense, this item shall specify tax administration obligations regarding transparency, clarity, certainty, timely issuance and publication in respect of acts of issued.
- *Article 14: Confidentiality.* All information that a taxpayer provides to fiscal administration must remain confidential, and transmitting the data to a third person can be achieved if the law requires this or if is obtained the taxpayer permission. Thus, this item shall specify the elements which concerns to protect the confidentiality and privacy of taxpayers, to avoid the commercial, social and ethical negative consequences.
- *Article 15: Quality standards.* Efficiency and effectiveness of fiscal administration will be visible both through the implementation of quality standards for tax legislation and also through implementation of quality standards for services provided to taxpayers and to optimize the activity. Thus, in this item reference can be made to: clear and unambiguous language of the fiscal laws; time of application the fiscal laws; the connection between the legal provisions with implications in taxation; efficiency for revenue collection system; improving the image of the tax administration; ability for organizational growth; better fiscal education.
- *Article 16: International double taxation.* Taking into account the principles of taxation, international double taxation should be avoided, because repeated taxation of revenues both in the State of residence and in the State of origin, hinder the development of economic relations between states, diminishing

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interest of international operators for investing abroad. Thus, in this item may be provided information on ways in which international double taxation is avoided, respectively unilateral methods (tax exemptions, tax credits, tax expense deduction) and conventional methods.

- *Article 17: Interest and penalties.* Failure to comply the deadline for payment of tax obligations, involve establishing interest and penalties. Taking into account the principle of non-discrimination, through this item will be clarified issues relating to the calculation and application of interest and penalties.
- *Article 18: Taxpayers equality.* In the face of tax laws all taxpayers must be equal, whatever the activity, the size, the legal form of organization, the importance it has in society. Where, the tax exemptions for certain taxpayers realized from the tax liabilities, these must be part of tax incentives, namely economic and social policy measures aimed at contributing to the progress and development and not to violate the principle of equality.
- *Article 19: Tax advice.* Fiscal consultancy activity consists, on the one hand in providing specialized professional services assistance in tax matters, and on the other hand the representation before tax authorities. Thus, through this item reference can be made to requirements and procedures imposed by fiscal administration regarding tax advice.
- *Article 20: Special Provisions.* All the provisions of the Charter should be instituted so as to secure the four fundamental freedoms of the European Union, free movement of persons, free movement of goods, free movement of services and free movement of capital. So, the rights and obligations of a Romanian taxpayer must be fully consistent with the rights and obligations of the European taxpayer.

4. Conclusions

Most of the information that we propose to be included in the new Charter of the taxpayer in Romania are found currently in: content of the two fundamental laws for the taxation area, respectively the Fiscal Code and the Fiscal Procedure Code; the official website of the National Agency for Fiscal Administration; the fiscal administration strategy; decisions and orders issued by the fiscal administration; the activity reports of tax administration; the reports issued by the independent fiscal institution, namely the Fiscal Council. Without claiming an exhaustive approach, we consider that, a synthesis of these information through the new Charter will allow any taxpayer to identify much easier rights and obligations that he has in relation to tax administration. Also, through the structure and content of the new Charter, we consider that fiscal administration will become a real partner of the taxpayer, simplifying his life and treating him with respect and fairness.

5. References

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