SOME CONSIDERATIONS REGARDING THE PRINCIPLE OF THE UNIQUENESS OF FISCAL CONTROL

Florin TUDOR

Abstract: By means of pertinent solutions and annotations, the scholarly literature has drawn attention to the possible danger of the wrongful implementation of the provisions of art.216 paragraph 3 of the Fiscal Procedure Code, as it’s increasingly becoming a common practice of the NAFA competent fiscal authorities to abrogate fiscal acts and to issue another fiscal administrative act. Advantages can be thus created for the subordinate observing fiscal bodies, proportional with the opponent debtor, due to the recommendations of the jurisdictional resolution body by motivating the decision itself.

This way we consider that the main procedural principle is being broken, the principle according to which the fiscal inspection is carried out one time only for each tax, tariff, contribution and other sums due to the general consolidated budget and for each time interval subject to taxation.

The article at hand sets off to analyse all aspects related to repetitive examinations directed by NAFA and to the breaking of the principle of uniqueness of the fiscal control. Without being exhaustive on the topic, we wish to accelerate and level the process of implementation of the fiscal law, extremely useful for putting into practice the principle of the public trust in the fiscal administration.

Keywords: fiscal taxation; fiscal administrative action; debt security uniqueness of fiscal control; fiscal contest.
JEL Classification: K 34

1. Short procedural issues regarding fiscal contests

Recent decisions of the relevant jurisdictional authorities for settling the contests formulated against the fiscal taxation actions seem to outline an orientation of the ANAF institutions towards solutions which concern mainly the abrogation of the fiscal taxation action and the elaboration of a new fiscal administrative action.

Therefore, in a relatively recent decision\(^1\), the general direction for contest settlement within ANAF has abrogated the fiscal taxation action recommending the elaboration of a new fiscal administrative action by re-analyzing the actual situation on which the initial decision of the taxable basis was based and without agreeing with the contest, neither totally, nor partially.

In conclusion, in other relevant decisions\(^2\), as well as in doctrine\(^3\), having as a starting point the legal basis\(^4\) of rejecting the contest for not having fulfilled the procedural conditions, mainly, the following solutions have been drawn:

---

\(^1\) PhD., assistant professor, Faculty of Law - „Dunărea de Jos” University of Galați, Romania.

\(^2\) See Decision no.101/2007 of the General direction for contest settlement within the National Agency for Fiscal Administration

complete acceptance, when the petitioner has proved and the settlement authority assimilated all formulated claims;
partial acceptance, when the petitioner has proved and the settlement authority has assimilated only part of the formulated claims;
rejection as not founded, if, from the administered evidence, it results that the claim is not founded or sustained by the evidence submitted in due time;
rejection as inadmissible, when the remedy at law was formulated and introduced by a natural or legal person, without having the active procedural quality or without having an interest or when the contest remedy at lae could not be introduced against the action started;
rejection as lacking the object, when the ascertained facts were not the object of the fiscal administrative action;
rejection as late, when the remedy at law was not submitted in legal term.

2. **Individualization of the fiscal debt. Fiscal administrative action – debt security**

As an individual approach of the budgetary duty, the legal literature notes that the budgetary debt security stands for the legal action which determines the extent of the payment liability of the natural or legal person who has the quality of fiscal law subject (taxpayer).

In another context, it is considered that the budgetary-financial debt securities are the ascertaining and individualizing documents of the amounts due as taxes, duties or other sources of income.

Fundamentally, the main reason of the debt security is to achieve the application of the general and impersonal legal provisions to the individuals, which is to apply the law to each taxpayer according to the taxable object or matter.

The fiscal debt security is issued or confirmed by fiscal authorities, who must calculate the taxes and duties due to the public budget.

According to point 107.1 from the Methodological directives for the application of the Fiscal procedure code, the following categories of legal documents are considered debt securities:

- the taxation decision issued by relevant authorities, according to the laws in force;
- the fiscal statement, the payment obligation or the document issued by the payer by which he declares fiscal duties, if these are determined by the payer, according to the law in force;
- the decision which determines and individualizes the amount due, for complementary fiscal debts, representing interests and default fees, determined by the relevant authorities;
- the customs declaration for the customs payment duties;
- the document which determines and individualizes the customs debt, including accessories, according to the law in force;
- the violation inspection and penalization report, issued by the legal authority, for the obligations concerning the payment of contravention fines;
- the prosecutor’s ordinance, the conclusion or provision of the court decision or a certificate excerpt issued according to these documents for fines, of the legal expenses an of other fiscal debts determined, according to the law in force, by the prosecutor or court.

3. **The abrogation of the contested taxation action including further verification without accepting the contest**

Taxes, duties, contributions and other amounts due to the general consolidated budget are determined as follows:

---

4 Art.13.1 from the Order of the National Agency for Fiscal Administration no.519 of September 27th 2005 regarding the approval of the Instructions for the application of headline IX of the Governmental Ordinance no. 92/2003 regarding the Fiscal procedure code, republished, published in the Romanian Official Gazette, Part I, no.893 of October 6th 2005
5 See Decision no.1001/2000 of the Supreme Court of Justice
8 See also Constantin D.Popa, Adrian Fanu-Moca, *Public finance law*, Ed. Lumina Lex, Bucharest, 2008, p.178
by fiscal declaration, when the taxpayer must calculate the amount of the fiscal duty (art. 82 align. 2 Fiscal procedure code);

- by a decision issued by the fiscal authority, in all other situations.

The tax return (as it is the most used form of the fiscal administrative action) is issued by the relevant fiscal authority whenever the tax basis is modified⁹.

The taxation decision is also issued when no decision related to the taxation basis was issued (art.89 Fiscal procedure code).

According to the Fiscal procedure code¹⁰ for contest settlement, the ANAF authorities make a decision when it refers to contesting certain fiscal administrative actions whose object is the income allocated to the public budget.

By means of a decision, according to art. 216 of the Fiscal procedure code, the contest may be accepted, totally or partially, or rejected. If the contest is accepted, it is determined, as necessary, the complete or partial abrogation of the action brought before the court. At the same time, by means of a decision, the fiscal administrative action may be completely or partially abrogated (art. 216 align.3) if the relevant settlement authorities of ANAF cannot make a decision out of the analysis of the documentation, over the approach of determining the taxable basis. For the latter, „a new fiscal administrative action will be issued, which will consider strictly the grounds of the settlement decision”¹¹.

Legal practice as well as certain authors¹² have focused, while providing solutions and relevant comments, on the eventual risk entailed by an incorrect application of the provisions contained by art. 216 align.3 of the Fiscal procedure code, as, the relevant settlement authorities of ANAF have made a real practice in issuing decisions¹³ by which they dispose the abrogation of the fiscal taxation action. They recommend the elaboration of a new fiscal administrative action by re-analyzing the actual situation on which the initial decision of the taxable basis was based and firstly without agreeing with the contest, neither totally, nor partially and without disposing over the effects entailed by the decision made.

Although civil law does not contain essential differences between the notions of annulment and abrogation regarding the effects¹⁴, the legal action being practically completely deprived of effects, the legal authority understood out of the draft of art. 216 of the Fiscal procedure code to make a distinction between the two notions.

In our opinion, the settlement authority must analyze first if the action brought to court is or is not illegal, as compared to the evidence forwarded and the legal directives related. The relevant settlement authorities of ANAF must also make a decision upon the eventual illegalities of operations which determined the elaboration of the fiscal action brought to court.

When a decision is not made on the annulment of the fiscal action¹⁵, the decision of abrogation of a fiscal contest can only be made after its total or partial acceptance¹⁶. As long as settlement authorities have decided the abrogation of the action brought to court, they must also dispose the annulment of the actions related to it.

If the principles declared in art. 216 align.3 compared to art. 216 align.1 from the Fiscal procedure code are not observed (contest abrogation without being accepted), we believe that the administrative courts must penalize by annulment the decisions made by the relevant settlement authorities of ANAF.

---

¹⁰ art.179.1 of the Methodological directives for application of the Governmental Ordinance no.92/2003 regarding the Fiscal procedure code
¹¹ Adrian Fanu-Mocă, op.cit., p.240
¹³ http://anaf.mfinante.ro/wps/portal
¹⁵ the grounds, which will include the the reasons in fact and law forming the conviction of the settlement authority, must be „clear, non-contradictory, so that, based on all administrative evidence involved, on arguments and legal reasons, on principles and regulations of substantial and procedural law, to ensure the pertinency of the given solution” (Constantin D. Popa, op.cit, p.138); See also Emil Bălan, op.cit., p.257
¹⁶ the decision decree contains the solution pronounced in accordance with art.216 from the Fiscal procedure code, as well as the indication of the remedy at law which the petitioner may exerce in front of the relevant court.
4. Control rehabilitation and elaboration of another fiscal administrative action

The essential resulting from the above mentioned is that the abrogation of a fiscal administrative action entails at law the obligation of the ascertaining fiscal authority to conclude a new fiscal administrative action.

For the above mentioned, the previously quoted literature has noted that the decision of the relevant settlement authorities of ANAF, by which the control rehabilitation and the elaboration of another fiscal administrative action were disposed, may become the object of a suing, the individual concerned being able to have a legitimate interest in order to obtain the annulment of such a decision.

We believe that by issuing a new fiscal administrative action, which makes the object of inspection for the same fiscal period and the same taxes, the interests of the taxpayer are affected in view of his obtaining a solution to the fiscal contest.

The damage consists in the fact that during the entire administrative procedure for the contest settlement, the amounts due to the public budget are frozen unlimitedly. It is preferable that the „court would censor the eventual abusive practices of fiscal authorities in uselessly extending the settlement period for the fiscal contests”17.

By means of abrogating the taxation action and of recommending the ascertaining fiscal authority to analyze again the situation de facto, the settlement authorities of ANAF may thus create advantages for the subordinated fiscal authorities (directions of the district public finance, customs, fraud squad, etc.) as compared to the contesting debtor, to the extent that, although theoretically there couldn’t be any other findings or additional data, a new control action may be issued for the same tax and for the same fiscal period, differently formulated or legally framed, with additional interpreted evidence, this time by the issuing authority, according to the recommendations received from the jurisdictional settlement authority.

Therefore, we may consider that the procedural principle given by art. 105 allign.3 from the Fiscal procedure code is being breached, principle which stipulates that „fiscal inspection can only be unfolded once for each tax, contribution and other amounts due to the general consolidated budget and for each period submitted to taxation”.

In order to support the same idea we bring as an argument the exception stipulated in the second thesis of art. 105 allign.3 of the Fiscal procedure code: „the relevant manager of the fiscal inspection may decide to re-check a certain period of time if, from the initial date of the fiscal inspection and until the date of fulfilment of the prescription term, additional data unknown to the fiscal inspectors appear at the date of check unfolding or calculation errors which influence their results”.

In other words, by abrogating in all cases the taxation action, followed by the recommendation of the ascertaining fiscal authority to issue another fiscal action, a basic principle of the control activity was breached, that is the principle of the fiscal inspection uniqueness, according to which this is unfolded once for each tax or duty for each period submitted to fiscal control18.

5. Conclusions

In order to observe the principle of fiscal uniqueness and to eliminate (as we consider) the advantages described to the ascertaining fiscal authorities as compared to the contesting debtor, based on the recommendations received from the jurisdictional settlement authority by the motivation of the decision itself, we believe that a series of clarifications are needed.

Thus, the settlement authority must analyze first if the remedy at law is or is not illegal, as compared to the evidence provided and the legal regulations related. At the same time, the relevant settlement authorities of ANAF must also make a decision upon some eventual illegalities.

When the decision of annulling the fiscal action is not taken, the decision of abrogating a fiscal contest can only be made after its total or partial acceptance. Otherwise, the court must penalize by annulment such a practice, still current, of the jurisdictional authorities of ANAF.

17 Daniel Dascălu, Cătălin Alexandru, op.cit., p.567
18 Ibidem, p.284
Bibliographical references:

- Daniel Dascălu, Cătălin Alexandru – *Theoretical and practical explanations of the Fiscal procedure code*, Ed. Rosetti, Bucharest, 2005
- The Order of the National Agency for Fiscal Administration no.519 of September 27th 2005 regarding the approval of the Instructions for the application of headline IX of the Governmental Ordinance no. 92/2003 regarding the Fiscal procedure code, republished, published in the Romanian Official Gazette, Part I, no. 893 of October 6th 2005