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SOLUTIONS ON FISCAL APPEALS

Abstract

The fiscal authorities that deal with solving the fiscal appeals issue decisions through which they order the annulment of the act of fiscal taxes and the issuing of a fiscal administrative act by re-assessing the situation de facto which was the basis of establishing the basis to be taxed, without mentioning if the appeal has been admitted, totally or partially and without deciding on the effects that come as a result of the decision issued.

Such a decision may put the subordinate fiscal authorities at an advantage in relation to the claimant, even if there are not any other findings or extra information, most of the times violating the principle of the fiscal control being unique for the same tax and the same fiscal period of time.

Keywords: *annulment, legality, fiscal inspection being unique*

1. As related to the legal reason to reject the appeal for not fulfilling the procedures [1], in theory, the following solutions were found as a result of the analysis of the appeal by the administrative fiscal authority [2]:

- total admission, when the claimant has brought and the authority meant to solve the appeal has received all the claims formulated;
- partial admission, when the claimant has brought and the authority meant to solve the appeal has received only a part of the claims formulated;
- the rejection of the appeal as unfounded, if, from the evidence brought it results that the claim is not founded or it is not supported by the evidence brought in due course;
- the rejection of the appeal as inadmissible, in the cases when the petition was formulated and introduced to the authorities by a physical or juridical person that did not have an active juridical quality or with no interest or when against the act to be contested there cannot be introduced an appeal as a legal procedure;
- the rejection as being unfounded, in the situation in which the facts that were presented have not made the object of the fiscal administrative act;

- the rejection as being overdue, in the case that the appeal has been filed too late [3].

According to p. 179.1 of the Methodological Norms for applying the Govern's Decision no. 92/2003 with regard to the Code of fiscal procedures (named hereafter the Code of fiscal procedures), when solving the appeal, the authorities of the National Agency of Fiscal Administration (hereafter ANAF) has pronounced its decision, when legal contest of some administrative fiscal acts are concerned that have as object sums allotted to the state budget.

By this decision, according to art. 216 of the fiscal procedure Code, the appeal may be admitted totally or partially, or rejected. In case of the admission of the appeal, there is decided accordingly total or partial annulment of the act contested. At the same time, by this decision, the fiscal administrative act may be totally or partially annulled (Art. 216. par 3) in case the competent authorities of ANAF after analyzing the documents, cannot establish a decision on how to set the basis to be taxed. In this final situation, *"a new fiscal administrative act is going to be issued which will have in view strictly the decision to solve the appeal"* [4].

2. Although the judiciary practice and some authors have drawn the attention through solutions and viable comments about the danger that may come from not applying correctly the stipulations of art. 216 par. 3 of the fiscal procedure Code [5], the competent authorities of ANAF are still issuing decisions [6] through which they order the annulment of the fiscal taxing act and recommend the issuing of a new fiscal administrative act by re-analyzing the situation de facto when establishing the basis to be taxed, without making a decision, first to admit the appeal, totally or partially and without deciding on the consequences of this decision.

Although in the civil law there are no noticeable differences between the notions of annulment and suppression of these effects [7], practically in both situations the juridical act having no effects, the authority that has issued art. 216 of the fiscal procedure Code has made the difference between the two notions.

In our opinion, the authority meant to solve the appeal must firstly analyze if the act contested is legal or illegal, in relation to the evidence at their

disposal and the legal norms to be applied in the case. Also, the competent authorities of ANAF must issue a decision on some possible illegal operations that have been at the basis of the issuing of the fiscal act contested.

We believe that when the decision to annul the fiscal act is not made [8], the decision to totally or partially annul the fiscal appeal may be taken only after admitting it totally or partially [9]. Once the competent authorities have decided the annulment of the contested act, they also have the obligation to dispose the annulment of the acts that result from it.

In case the principles stated by the art. 216 par. 1 from the fiscal procedure Code (admitting an appeal) are not respected, we believe that the Courts of administrative contentious have the obligation to sanction by annulment the decisions pronounced by the competent authorities of ANAF.

3. From the facts mentioned above also results that the annulment of a fiscal administrative act rightfully brings the obligation of the fiscal authority meant to record the facts, to issue a new fiscal administrative act.

In the sense of the facts mentioned above, the literature in the field quoted has claimed that the decision of the competent authorities of ANAF, decision through which they ordered the control to be repeated and issued another fiscal administrative act, may become the object of a law suit where the interested party may have a legitimate interest to obtain the annulment of such a decision.

We believe that by issuing a new fiscal administrative act, which makes the object of the control for the same period of time and for the same taxes, the interests of the tax payer are affected when obtaining a solution for his fiscal appeal.

The damage consists in the fact that throughout the period of the administrative procedure needed to solve the appeal, the sums of money owed to the state budget are blocked for an undetermined period of time. It is desirable that "the law courts should censure the fiscal authorities' possible abusive practices of uselessly prolonging the period of solving the fiscal appeals" [10].

4. By annulling the tax act and recommending to the fiscal authority to re-analyze the situation de facto, the ANAF authorities that solve these situations,

may create this way advantages for the subordinate fiscal authorities (departments of public finances, customs, financial control department, etc.) in relation with the claimant in debt, in the sense that although theoretically there cannot be other reports or extra information, there can be decided another control for the same tax and the same fiscal period, only stated differently or having another juridical frame, with additional evidence that is interpreted this time in the sense of the recommendations received from the jurisdictional authority meant to solve it.

This way, we think that the procedural principle of the art. 105 par. 3 of the fiscal procedure Code is broken, principle that states that *"the fiscal inspection is made only once for each tax, contribution and other sums owed to the general consolidated budget and for each period of time when taxes are paid"*.

To support these ideas, we also bring as arguments the exception mentioned by art. 105 par. 3 of the fiscal procedure Code: *"the competent leader of the fiscal inspection may decide to claim a certain period of time if, from the date of fiscal inspection and up to the prescription date there appears extra information unknown to the fiscal inspectors at the date when the control was made or there are some calculation errors that influence their results"*.

Practically, we may say that by annulling the tax acts in all cases, followed by the recommendation of the fiscal authority in control to issue a new fiscal act, a basic principle in the control activity has been broken, i.e., the one of the fiscal inspection being unique, according to which the fiscal inspection is carried out only once for each tax for each period of time under fiscal control [11].

In conclusion, the total or partial annulment of the contested decision presupposes firstly, the motivated admission of the appeal, totally or partially. If this does not happen, the contentious court has the obligation to sanction by annulling such a practice that seems rather current with the jurisdictional authorities of ANAF.

REFERENCES:

Analele Universității "Dunărea de Jos", Galați - Fascicula XXII
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- [1] Art. 13. 1 of the Order of the National Agency of Fiscal Administration no. 519 from 27 September 2005 with reference to the approval of the Instructions for applying title IX of the Govern's Decision no. 92/2003 with regard to the fiscal procedure Code, republished, published in the Official Monitor of Romania, part I, no. 893 from 6 October 2005.
- [2] Constantin D. Popa, *The present reglementation regarding the administrative-fiscal contentious*, in the Commercial Law Magazine no. 11/2001, p. 139; Adrian Fanu-Moca, *Fiscal Contentious*, ed. C.H. Beck, Bucharest, 2006, p. 241
- [3] For further study, the Decision no. 1001/2000 of the Supreme Court of Justice
- [4] Adrian Fanu-Moca, *op. cit.*, p. 240
- [5] For further study, Daniel Dascalu, Catalin Alexandru - *The Practical and theoretical explanation of the fiscal procedure Code*, Ed. Rosetti, Bucharest, 2005, p. 566; Tanti Anghel, Mihai Bragaru, *The Fiscal Procedure Code with notes*, Ed. Rosetti, București, 2006, p.468; Horațiu Sasu, Lucian Țățu, Dragoș Pătroi, *Fiscal Procedure Code - Comments and Explanations*, Ed. C.H.Beck, Bucharest, 2008, p.561
- [6] For further study, the Decision no. 101/2007 of the General Department of Solving ANAF appeals
- [7] Gheorghe Beleiu, *Civil Law, 10th edition, revised and completed*, Ed.Universul Juridic, Bucharest, 2005, p. 198 and others.
- [8] The considerations which will comprise the real reasons that led to the decision of the authority solving the case must be „clear, non-contradictory, so that based on all the evidence brought in this case, on the juridical arguments and judgment, principles and rules of substantial and court law, there can be given a just solution” (Constantin D. Popa, *op.cit.*, p. 138)
- [9] the mechanism of the decision consists of the solution pronounced according to art. 216 of the Fiscal Procedure Code, as well as the indicating the way to contest it that the claimant may have, as well as the deadline in which this can be done in front of the competent contentious law court.
- [10] Daniel Dascălu, Cătălin Alexandru, *op.cit.*, p.567
- [11] *Ibidem*, p.284
- [12] The decision of the Constitutional Court no. 416 of 3rd of May 2007 referring to the exception of the unconstitutionality of the dispositions art. 186 par. (3) of the Govern's Decision no. 92/2003 with regard to the Fiscal Procedure Code, published in the Official Monitor of Romania, 1st Part, no. 391 of 11th June 2007.