

COMPARATIVE STUDY ON FISCAL-ADMINISTRATIVE SOLICITOR'S OFFICE AND FISCAL SOLICITOR'S OFFICE

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Abstract

The fiscal-administrative solicitor's office represents the activity of solving litigations between tax payers and the fiscal administration, litigations whose purpose is to cancel totally or partially a fiscal-administrative document, document considered by the tax payer harmful for his legitimate right or interest recognized by law.

The fiscal solicitor's office represents the activity of solving litigations whose purpose is to cancel or correction of acts of enforcement of tax claims.

Research goal is to identify of the two institutions as many times between them is confusing.

Study objectives: analysis the current stage of research in the field, definition of fiscal-administrative solicitor's office, definition of fiscal solicitor's office, the identification of elements similarity, the identification differences between the two institutions.

Keywords: *fiscal-administrative solicitor's office, fiscal solicitor's office, fiscal-administrative document, act of enforcement, title executory.*

Introduction

Comparative study of fiscal-administrative solicitor's office and fiscal solicitor's office seeks to highlight the two institutions of the fiscal law. Comparative scientific research of fiscal-administrative solicitor's office and fiscal solicitor's office is important because through these procedural means taxpayers can defend their rights and interests are violated when the tax administrative bodies, being the major means of achieving fiscal equity.

By means of the two institutions, taxpayers are given the opportunity to bring their conflict with the tax before a judge who will decide on the conflict, thus restoring the legal order.

Intended objectives are to analyze the current state of research on fiscal-administrative solicitor's office and fiscal solicitor's office, definition of fiscal-administrative solicitor's office, definition of fiscal solicitor's office, analysis of the two institutions and to identify features and characteristics regarding the subject action, the time limit for action, courts of law, the parties, the identification of similarity between fiscal-administrative solicitor's office and fiscal solicitor's office and to identify differences between the two institutions.

Scientific research was done based on comparative study of national legislation (Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code, republished, with subsequent amendments, Law no. 554/2004 on administrative solicitor's office, as amended and supplemented, Code Civil Procedure), by addressing the literature in the field, and jurisprudence.

Addressing fiscal-administrative solicitor's office and fiscal solicitor's office is based on the work of specialists in administrative law, financial law and fiscal procedure and fiscal-law of civil procedure.

Paper content

In our approach will start from the classification of the institution of solicitor's office, which the literature¹ was classified according to several criteria, as follows:

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¹ Ioan Santai *Drept administrativ și știința administrației*, vol. II, (Publishing Risoprint, Cluj-Napoca, 2005), 281.

- generated by the subject stands out constitutional solicitor's office, administrative I solicitor's office, fiscal solicitor's office.

- by the authority before which settlement takes place, solicitor's office may be: judicial solicitor's office (the jurisdiction of the courts) and jurisdictional litigation (the competence of administrative courts or the very special nature).

- parties involved in nature and effects delivered solutions, solicitor's office may be: internal solicitor's office and international solicitor's office.

Analyzing the first criterion, which classified the solicitor's office after the dispute, we propose a different classification by this criterion, namely: constitutional solicitor's office, administrative solicitor's office (which in turn is subdivided into general administrative solicitor's office and administrative-fiscal solicitor's office, the species general administrative solicitor's office) and common law fiscal solicitor's office².

The fiscal-administrative solicitor's office is a species of administrative solicitor's office³. The special character of fiscal-administrative solicitor's office of regulation appears different, namely the administrative phase of its regulation by Ordinance no. 92/2003 regarding the Fiscal Procedure Code, republished, with subsequent amendments⁴, as well as recognition of fiscal-administrative solicitor's office as part of administrative solicitor's office by Law no. 554/2004 on administrative solicitor's office.

In the legal literature of our country, the fiscal-administrative solicitor's office was defined as „all the rules for the conduct of litigation documents and discussing the effects of fiscal administrative acts committed by public power”⁵, or a recent definition, The fiscal-administrative solicitor's office is „all legal remedies against acts of tax which requires the reduction or cancellation of taxes, contributions to special funds, the delay increases and penalties and fines or other sums found and applied by the fiscal authorities central and local authorities, by law, to conduct the audit or tax, which is solved by a special procedure by administrative bodies and / or courts”⁶.

The fiscal-administrative solicitor's office is defined as „all disputes between the public and manage the generated tax acts”⁷ or, in another definition, the fiscal-administrative solicitor's office is regarded „as a means derived from human rights, for the purposes procedurally, all actions and remedies that are resolved by the judicial authority of the state, the power of truth all legal disputes arising from the tax and put in front of the taxpayer (natural or legal person) and the fiscal and administrative the state”⁸.

Also, the fiscal-administrative solicitor's office was defined as all legal remedies against debt and other fiscal-administrative acts, which requires the reduction or cancellation of taxes, contributions, customs duty and the increase of delay times other amounts identified and measures implemented by administrative bodies and local tax, which is solved by a special procedure of administrative bodies and courts⁹.

² Octavia Maria Cilibiu, *Justiția administrativă și contenciosul administrativ-fiscal*, (Publishing Universul Juridic, Bucharest, 2010), p.175.

³ Octavia Maria Cilibiu, *Justiția administrativă și contenciosul administrativ-fiscal*, p.175.

⁴ Last modified by Law no. 188/2011 on the management fees collected in implementing the common agricultural policy and which are part of the financing of EU funds for agriculture, as well as own resources of the European Union, published in the Official Gazette, Part I, no. 763 of 31 October 2011.

⁵ Teodor Al. Bălan, *Contenciosul fiscal*, Bucharest, 1935, 15.

⁶ Constantin D. Popa, *Noțiunea, natura juridică și importanța contenciosului fiscal*, R. D. C. no. 7-8/2001, 302.

⁷ Emil Bălan, *Drept financiar*, Edition III, (Publishing All Beck, Bucharest, 2004), p.237.

⁸ Constantin D. Popa, *Noțiunea, natura juridică și importanța contenciosului fiscal*, p.302.

⁹ Constantin D. Popa, *Noțiunea, natura juridică și importanța contenciosului fiscal*, p. 302.

In our opinion, the fiscal-administrative solicitor's office is the activity of disputes between taxpayers and tax, litigation dealing with the cancellation of all or part of an administrative act, tax act by which the taxpayer is considered a right or injured in legitimate interest recognized by law¹⁰.

Organized in two phases, phase administrative (fiscal appeal) and phase jurisdictional the fiscal-administrative solicitor's office comes to the taxpayers provide free access to justice, leaving the first to comment on litigation fiscal-administrative, trying to rule on conflict situations .

In terms of the fiscal-administrative solicitor's office object, we must have regard to the object of fiscal and object to administrative appeal proceedings before the court.

Person who considers themselves wronged in their rights recognized by law by an administrative-fiscal or lack thereof can make fiscal appeal, according to the Fiscal Procedure Code, and then action.

Accordance with article 205, paragraph 1 of the Fiscal Procedure Code, the fiscal claim against the title against other administrative acts appeal may be made under the law. This article shows that the debt instrument is a fiscal administrative act, along with other administrative acts subject to the fiscal appeal. Other administrative acts which may be fiscal appeal are fiscal decision (are assimilated to fiscal decisions and administrative acts following: decisions on value added tax refunds and decisions on refunds of taxes, fees, contributions and other revenue of the budget consolidated, decisions on taxation bases decisions on payment obligations accessories, unchanging base decisions on taxation¹¹), the provision of measures, the decision on establishing joint liability, compensation notes, payment notices, minutes of the interest calculation due taxpayer debt on customs duty¹² (customs declaration, which sets the protocol and specifies the customs duty, including accessories) etc.

The object may be fiscal appeal fiscal administrative act itself, typical („document issued by the fiscal authority in the legislation for the establishment, modification or termination of rights and fiscal obligations”) and assimilated administrative act, atypical (no act „silence” fiscal body, that failure to resolve a claim within the legal deadline for issuing the administrative act, or unjustified refusal to resolve the request - explicit expression, with excess power will not solve the request)¹³.

Accordance with article 206, paragraph 2 of the Fiscal Procedure Code is the only object of dispute amounts and measures set by the fiscal body and the debt-claim or appealed fiscal administrative act, except an appeal against unjustified refusal to issue the fiscal administrative act.

Fiscal-administrative acts can not be appealed in administrative court without fulfilling the prior administrative proceedings. If admission appeal is decided, as appropriate, annulment or dissolution of all or part of the contested act. If the decision is wholly or partly dissolved appealed fiscal-administrative act will enter into a new fiscal-administrative act will be considered strictly considerations settlement decision.

Regarding the object of fiscal-administrative solicitor's office that is the decision or order issued after settlement of appeals against fiscal-administrative acts.

We believe that the object of fiscal-administrative solicitor's office or decision-fiscal is available to resolve fiscal appeals and fiscal-administrative act indirectly to the subject of fiscal appeal¹⁴.

Accordance with article 207, paragraph 1 of the Fiscal Procedure Code, the appeal deadline is 30 days from the date of the fiscal-administrative act, under penalty of forfeiture. This term is a period of decline and not recommendation. Notwithstanding, if the fiscal- administrative act contains

¹⁰ Octavia Maria Cilibiu, *Justiția administrativă și contenciosul administrativ-fiscal*, p.178.

¹¹ Article 88 of the Fiscal Procedure Code

¹² Point 5. 3 of the Order of the National Agency for Fiscal Administration. 2137/2011, published in Official Gazette, Part I, no. 380 of 31 May 2011.

¹³ Article 2, paragraph 1, letter h of Law. 554/2004 on administrative solicitor's office, published in Official Gazette of Romania, Part I, no. 1154 of 7 December 2004, as amended and supplemented.

¹⁴ Octavia Maria Cilibiu, *Justiția administrativă și contenciosul administrativ-fiscal*, p.225.

no provisions regarding the possibility of being challenged, the closing date of the appeal or the appeal body that is submitted, the deadline for appeals is 3 months of notification of the fiscal-administrative act.

The deadline for notifying the administrative solicitor's office court is 6 months, which commences from the date the response to challenge fiscal settlement date of unjustified refusal of the application deadline to resolve the fiscal dispute, that the legal deadline settlement demand, the deadline of 30 days calculated from the document issued in settlement favorable administrative application or, where applicable, the fiscal appeal. The term is six months limitation period.

For good reasons, if an individual administrative act, the application may be introduced over the term of 6 months but not later than one year from the date of the act or the date of the acknowledgment, the date of the request, as appropriate. Within 1 year is a period of decay.

Jurisdiction to hear fiscal appeal is given by the total amount of disputed amounts, taxes, fees, contributions determined by the tax payment and accessories thereof, or the total amount of fees, taxes, contributions, approved reimbursement such refund, if applicable.

Appeals against decisions of tax, fiscal administrative acts assimilated to tax decisions, decisions to regulate the situation issued in accordance with customs legislation, the tax loss mitigation measure established by measuring device, and against the decision of reverification is solved by¹⁵:

a) specialized structure for settling the appeals of the general directorates of public finance county or Bucharest, as appropriate, in whose jurisdiction the fiscal domicile challengers for appeals dealing with the taxes, fees, contributions, customs duties, accessories, tax loss mitigation measures, amounting to 3 million, and for appeals against the decisions of reverification, except those issued by the central bodies with powers of tax audit;

b) appeals a specialized structure for solving the general direction of public finances Bucharest county or, if necessary, jurisdiction under article 36 paragraph 3 to manage nonresident taxpayers who do not have a permanent establishment in Romania, to appeals made by them, having as taxes, fees, contributions, customs duties, accessories, tax loss mitigation measures, in the amount of up to 3 million, and for appeals against the decisions of reverification, except those issued by the central bodies with powers of tax audit;

c) the general solution of the appeals of the National Fiscal Administration Agency for appeals dealing with the taxes, fees, contributions, customs duties, accessories, as well as tax loss reduction in amount of 3 million or higher for appeals made by taxpayers, and those made against the acts listed in this article, issued by the central bodies of the inspection tax, regardless of amount.

Complaints made against other administrative acts shall be settled by issuing fiscal authorities.

The complaints raised by those who consider themselves aggrieved by unjustified refusal to issue a fiscal administrative act shall be settled by superior authority competent fiscal authority to issue that document. Appeals lodged against administrative acts issued by fiscal authorities, local government and other public authorities, by law, administer fiscal receivables are resolved by these authorities.

In the jurisdictional phase, background material competence of the courts is determined by the provisions of art. 10 of Law no. 554/2004, as follows:

- fiscal-administrative courts have unlimited jurisdiction in disputes concerning administrative acts issued or entered into by local authorities and county, and those relating to taxes, contributions, customs duties and accessories thereof up to 500,000 lei. By establishing their competence is polling in the administrative and fiscal courts;

¹⁵ Article 209 of the Fiscal Procedure Code, republished, with subsequent amendments.

- fiscal-administrative departments of the Courts of Appeal judges in disputes over administrative fund issued or signed by the central government and those relating to taxes, contributions, customs duties and accessories thereof exceeding 500,000 lei.

The appeal shall be settled as follows:

- appeal against sentences pronounced by fiscal-administrative courts judged and fiscal administrative departments of the courts of appeal.

- appeal against sentences handed down by cutting administrative and fiscal courts of appeal shall be heard by the administrative and fiscal division of the High Court of Cassation and Justice, if the special organic law provides otherwise.

Regarding the territorial jurisdiction, in accordance with article 10, paragraph 3 of the Administrative Litigation Law, the applicant may appeal from his residence or domicile of the defendant. If the applicant has chosen to court the defendant's residence, except for lack of jurisdiction can not claim territory.

Along with fiscal-administrative solicitor's office in our country specialist authors examine the institution of common law fiscal solicitor's office that is contesting the enforcement actions of fiscal claims.

Based on the criterion of the competent body to resolve the dispute arose and procedure applicable in the legal literature specialist¹⁶ fiscal solicitor's office was classified as common law fiscal solicitor's office and administrative-fiscal solicitor's office.

The literature¹⁷ of common law fiscal solicitor's office was defined as the actions and remedies which common law courts resolve disputes by common procedural rules arising between taxpayers and fiscal authorities of the state or administrative-territorial units.

Whenever they are breached legal requirements relating to enforcement proceedings, the person concerned, if our taxpayer subject to enforcement, is able to notify the court of execution, seeking to obtain cancellation of acts contrary to the law enforcement. Means procedure which puts the law for this purpose to the person concerned is the challenge to execution¹⁸.

The appeal to enforcement has been defined in the literature¹⁹ as specific complaint that enforcement is achieved before the court, cancellation or correction of acts of enforced or sometimes even the annihilation of an enforceable effect.

Fiscal solicitor's office are identified with to appeal enforcement regulated by Title VIII, Chapter XI art. 172-174 of the Fiscal Procedure Code, the special enforcement²⁰ because an appeal to the general rule of enforcement complaints contained in art. 399-404 of the Code of Civil Procedure shall apply to a number of special rules contained in the Fiscal Procedure Code²¹.

Accordance with article 172, paragraph 1 of the Fiscal Procedure Code, interested persons may appeal against any enforcement act done in violation of the Fiscal Procedure Code by enforcing bodies and where these bodies refuse to perform an act of execution the law.

According to paragraph 2 of the same article, the appeal may be made against enforcement pursuant to which the execution was started, where this title is not given a decision by a court or other judicial authority for such appeal and if there is another procedure prescribed by law.

The provisions on temporary suspension of enforcement by presidential ordinance under article 403 par. 4 of the Code of Civil Procedure are not applicable.

¹⁶ Constantin D. Popa, *Noțiunea, natura juridică și importanța contenciosului fiscal*, p.302-303.

¹⁷ Adrian Fanu Moca, *Contenciosul fiscal*, (Publishing C. H. Beck, Bucharest, 2007), p.25.

¹⁸ Gabriel Boroi, Dumitru Rădescu, *Codul de procedură civilă comentat și adnotat*, (Publishing , Bucharest, 1996), 688, cited by de Horațiu Sasu, Lucian Țătu, Dragoș Pătroi, *Codul de procedură fiscală. Comentarii și explicații*, Publishing C. H. Beck, Buchares, 2008, 450.

¹⁹ Savelly Zilberstein, Viorel Mihai Ciobanu, *Tratat de executare silită*, Publishing Lumin Lex, Bucharest, 2001, p.251.

²⁰ Adrian Fanu Moca, *Contenciosul fiscal*, p. 287.

²¹ Dan Șova, *Contestația la executare silită în materie fiscală*. Part I, R. R. D. A. no. 5-6/2004, p. 8.

Thus, the object of enforcement complaints can be:

- any act performed in violation of Code Enforcement Fiscal Procedure by enforcement bodies;
- refusal of enforcement bodies to carry out an act of law enforcement;
- against enforcement pursuant to which the execution was started, where this title is not given a decision by a court or other judicial authority for such appeal and if no other procedure prescribed by law.

The appeal against enforcement is a challenge distinct from the other, but in an appeal directed against the whole execution be, or against an act of execution, the appellant may raise the issue of the validity of title²².

- execution very

Although the Fiscal Procedure Code does not expressly govern the enforcement appeal against enforcement itself, the interpretation of article 173, paragraph 1 letter A challenge that now may be brought against all enforcement²³. Thus, under these provisions, the appeal can be made within 15 days, under penalty of forfeiture, the date when the applicant was informed of the execution or enforcement of the act that challenges.

Accordance with article 172 paragraph 4, the complaint is lodged with the competent court shall be tried in an emergency procedure.

About the interpretation and application of article 169, paragraph 4 (current article 172, paragraph 4) has been appealed in the interest of law by the general prosecutor of the High Court of Cassation and Justice.

Representative of the general prosecutor of the High Court of Cassation and Justice, argued the appeal in the interest of law, asking to be decided in that court in whose jurisdiction the execution is made shall have jurisdiction in appeals brought against themselves or enforcement of acts of execution, writs of execution carried out pursuant to the fiscal that appeals against fiscal debt.

United polling found that in pursuance of article 169 paragraph 4 of the Fiscal Procedure Code, republished, with subsequent amendments, the courts have ruled differently on the material and territorial competence to settle complaints and appeals against enforcement of fiscal enforcement.

Appeal in the interest of law filed by the Attorney General's Office of the High Court of Cassation and Justice was admitted.

In applying the provisions of article 169 paragraph 4 of the Fiscal Procedure Code, republished, with subsequent amendments, shall:

“The judge in whose jurisdiction the execution is made shall have jurisdiction in the appeal, the enforcement against itself, an act or enforcement measures, refusal of fiscal enforcement bodies to carry out an act of law enforcement, and enforcement against under which the execution was started, where this title is not given a decision by a court or other judicial body, if for no other such appeal procedure provided by law.”²⁴

As the deadline to appeal, in accordance with article 173, paragraph 1 of the Fiscal Procedure Code, the appeal can be made within 15 days, under penalty of forfeiture, the date when:

- a) the applicant was informed of the execution or enforcement of the act that contest, the communication received summons or other notice or, failing that, when conducting enforcement or otherwise;

²² Dan Constantin Tudurache, *Contestația la executare*, edition two, Publishing Hamangiu, Bucharest, 2009, p.39.

²³ Dan Șova, *Contestația la executare silită în materie fiscală*, 9; Adrian Fanu Moca, *Contenciosul fiscal*, p.296.

²⁴ Decision no. XIV a High Court of Cassation and Justice - United Sections - 5 February 2007, published in the Official Gazette, Part I, no. 733 of 30/10/2007, www. scj.ro

b) the applicant was informed according to letter. a) the refusal of enforcement body to perform an act of execution;

c) the person concerned has been informed according to letter. a) the issue or distribution of amounts that contest.

Under the provisions of paragraph 2 thereof, the appeal by a third person claims to have an ownership or other real right over the good sought may be brought not later than 15 days after execution.

Failure to appeal within the period specified in paragraph 2 does not prevent the third to achieve their right to a separate application under common law.

If admission to execution appeal, the court, if necessary, may order cancellation of the execution thereof challenged or correction, cancellation and termination of the execution itself, cancellation or clarification of the enforcement or carrying out of the execution of which was refused²⁵. Thus, in case of cancellation of the execution or enforcement of the challenged fiscal-administrative act occurs abolish that, and for straightening of the execution or enforcement of the change that fiscal-administrative act.

In case of cancellation of the execution or termination of the execution itself challenged and enforcement of cancellation, the court may order the same decision to be returned to the entitled amount due to him from the sale of goods or deductions by attachment.

In case of rejection of appeal the appellant may be required to request the enforcement authority, to compensation for damages caused by delay in execution, and when the challenge was exercised in bad faith, he will be obliged to pay a fine from 50 to 1.000 lei.

From the above, identify *elements of similarity* between the two institutions, fiscal-administrative solicitor's office and fiscal solicitor's office, as follows:

- Both are means by which taxpayers, individuals or legal rights and defend their interests under the law;
- Both designate disputes occurred between taxpayers and fiscal administrative organs;
- Both are ways that change or abolish fiscal-administrative acts;

Article 47 of the Fiscal Procedure Code provides for the abolition or alteration of the fiscal-administrative acts. Thus, in accordance with this article, paragraph 1, fiscal administrative act may be terminated or modified under the Fiscal Procedure Code.

Rules for the application of O. G. No. 92/2003 regarding the Fiscal Procedure Code, provided in section 46.1 where change or abolish fiscal-administrative acts, namely: if straightening material errors; when finding invalid fiscal-administrative act; it is shown that the owner of the ownership of property or taxable value is indicated by someone other than the fiscal administrative act; as a result of the abolition or modification of the fiscal decision, subject to further verification, in case of cancellation or straightening of the execution or enforcement of the challenged, because resolution by the court of appeals to enforcement; total or partial abolition of the administrative act attack, as part of the settlement of the dispute referred to the fiscal authority.

• In terms of parties, both for fiscal-administrative solicitor's office and fiscal solicitor's office where the defendant is an administrative body which is part of fiscal administration and taxpayers who are plaintiffs are citizens, but they are a special category, namely those who owe taxes and other contributions to the budget.

The two institutions are *different*:

- The fiscal-administrative solicitor's office takes place in two phases: administrative and legal phase, whereas if we just fiscal solicitor's office jurisdictional phase;
- Fiscal-administrative solicitor's office are governed by a legal regime of public law, that the rules contained in the Fiscal Procedure Code and those contained in Law no. 554/2004 on

²⁵ Accordance with article 174, paragraph 3 of the Fiscal Procedure Code, republished.

administrative solicitor's office, as amended and supplemented, and in terms of fiscal solicitor's office in addition to general rules of enforcement complaints contained in art. 399-404 of the Code of Civil Procedure shall apply to a number of special rules contained in the Fiscal Procedure Code, so disputes are governed by a mixed regime;

- In the object action for fiscal-administrative solicitor's office is an fiscal-administrative and fiscal solicitor's office if the action object is an act of execution, a writ of execution;

With regard to fiscal enforcement, in accordance with article 141 par. 2 of the Fiscal Procedure Code, the debt-claim becomes enforceable claim on the fiscal is due by the payment deadline set by law or determined by the competent body or otherwise provided by law.

According to paragraph 4 of the same article, in addition to the items specified in article 43 paragraph 2²⁶ of the code necessary for fiscal administrative act, the enforcement will include: fiscal identification code, residence fiscal and any other identifying information, amount and nature of the amounts due and unpaid under legal binding power of the title.

- In the competent court to settle disputes, if the fiscal-administrative solicitor's office in fact be the competent court is the court or court of appeal, and for fiscal solicitor's office, the competent court is the judge.

Conclusions

Scientific research has suggested the institution's comparative study of fiscal-administrative solicitor's office and fiscal solicitor's office institution, resulting in the analysis of the two institutions and to identify similarities and differences between them.

We wanted to highlight similarities and differences between the two institutions since both belong to fiscal law and procedural means by which taxpayers are defending their rights and interests by law, and often can create confusion between the two institutions, wishing to make themselves distinction between the two institutions.

The future requires detailed analysis, punctual and to the point, the fiscal-administrative solicitor's office and fiscal solicitor's office, leading to a thorough knowledge of issues related to the two institutions, problems that arise in fiscal-administrative solicitor's office or fiscal solicitor's office.

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²⁶ Under these provisions, fiscal administrative act include:

- Name of the issuing fiscal body,
- The date of issuance and the date on which it becomes effective,
- Identification of the taxpayer or the person authorized by the taxpayer, if necessary,
- Subject of the administrative, fiscal,
- Reasons in fact,
- Under the law,
- Name and signature of the fiscal body of persons empowered by law
- Stamp of the issuing fiscal body,
- Can be challenged, and the appeal deadline for filing the tax appeal,
- Entries on the hearing the taxpayer.

- Constantin D. Popa, Noțiunea, natura juridică și importanța contenciosului fiscal, în R. D. C. nr. 7-8/2001, p. 302.
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