

STUDY CONTESTING TAX RULES ON SOCIAL SECURITY CONTRIBUTIONS BY TAXPAYERS FROM ROMANIA

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Abstract

The management bodies of companies must know and correctly apply tax law. There are, however, the practical situations, when, although they want to respect this, taxpayers are penalized by the tax authorities, because it did not comply with tax obligations. There are many factors that can determine this, among which: circumvent tax rules in order to avoid paying taxes and incorrect application of law. In this study was approached the second factor, namely: analysis of the most common situations in which both taxpayers as well fiscal authorities erroneously apply tax law. To achieve these results, was developed a study regarding the determination degree of contesting the tax rules, in area of social security contributions. Data subject research was extracted in the database officially published by competent insitutions tax. The research was conducted for the period January 1, 2004 and until February 28, 2015. In terms of research methodology, were used both quantitative methods and qualitative methods. Finally, data were centralized by type of articles, they are sorted according to the extent of contestation obtained. The final conclusion is that imprecise definition of the terms tax is one of the main causes which determines incorrect application of tax law. The results can be used especially by the subjects of tax legal relationship, to avoid situations the tax law is applied incorrectly, aspects that may lead to negative situations, both companies and the state institutions.

Keywords: tax rules, social security contributions, contesting, taxpayers, tax authorities.

1. Introduction

In compiling this study was started from **Adam Smith's** statement, according to which, *“tax each person is obliged to pay, should be certain and not arbitrary, upon payment, method of payment and the amount of money to be paid must be clear and simple for the taxpayer and any other person”*.¹ Starting from this statement, in this study, author aims to determine which tax rules which created the most problems business taxpayers in Romania, in matters of social security. In the last 10 years, tax legislation was amended quite frequently, a major cause being included in the taxable new sources of income. Also, imprecise definition of certain tax rules, can lead to situations where both taxpayers and tax authorities to apply different tax rules. These two reasons have led the author to conduct a series of research studies² on determining the degree of contesting rules, in different areas, this paper having as main social contributions. To obtain these consequential, author used data published by official state institutions, analyzing complaints filed by taxpayers and settled by the

competent institutions, for a period of 10 years more. The final objective of the research was to highlight mistakes both by taxpayers and tax authorities, so as to avoid such problems in the future.

Taxation concepts are presented in a series of theoretical and empirical studies. Thus, **John Locke**, says, *„the states have governing predetermined laws, which is not changed repeatedly and rules must be applied equally, both the rich and the poor.”*³

Clemens Fuest, from University of Oxford, with other authors, have developed a study on the relationship between payroll and payroll tax. Data were extracted on samples drawn from the German. The results show that there is an inverse relationship between them. Thus, given that there is a payroll tax increase, while there is a decrease in gross salary fund.⁴

Erik M. Jensen, from Case Western Reserve University School of Law, has prepared an article entitled *The Individual Mandate, Taxation and the Constitution*, the issues addressed in the US Supreme Court in Case National Federation of Business v. Sibelius (NFIB). The author comments on the constitutionality of laws, that establish taxes charged taxpayers.⁵

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¹ Adam Smith, *Avuția națiunilor, cercetare asupra naturii și cauzelor ei*, 1776, pag. 677

² Adrian Doru Bigioi, *Study on the Evaluation of the Contestation Degree of Excise Duty Rules*, by Romanian Companies, Revista Audit Financiar, Anul XIII, nr. 123 - 3/2015, pg. 74

³ John Locke, *Two Treatises of Government Chapter XI Of the Extent of the Legislative Power*, Prepared by Rod Hay for the McMaster University Archive of the History of Economic Thought, 1823, Paragr. 142, Pg. 167

⁴ Clemens Fuest, University of Oxford; Institute for the Study of Labor (IZA), Andreas Peichl, Institute for the Study of Labor (IZA); University of Cologne - Cologne Centre for Public Economics (CPE); University of Essex - Institute for Social and Economic Research (ISER), Sebastian Sieglösch, Institute for the Study of Labor (IZA); University of Cologne - Department of Economics, *Do Higher Corporate Taxes Reduce Wages? Micro Evidence from Germany*, CESifo Working Paper Series No. 4247, May 31, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2274634

⁵ Erik M. Jensen, Case Western Reserve University School of Law, *The Individual Mandate, Taxation, and the Constitution*, Journal Taxation of Investments, p. 31, Fall 2012, Case Legal Studies Research Paper No. 2013-4

Paul L. Caron, from Pepperdine University - School of Law and other authors, have developed a paper entitled *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, they discussed issues respecting the principle of equity in terms of tax law. Thus, according to the authors, major social inequality harms, they persisted over generations. From this perspective, the authors criticize the policy states no corresponding tax proceeds from inheritance.⁶

Robert Carroll, together with other authors, have developed an article entitled *The X Tax: The Progressive Consumption Tax America Needs?*, they did an analysis of the influence they have on the economy, income tax and consumption tax. Thus, according to the authors, increasing the income tax affects household savings decline, while increasing the consumption tax, lowering influence consumption.⁷

Avneesh Arputham has prepared a paper entitled *Constitutionality of Taxing Services Provided and Received Outside India*, in which he analyzed the constitutionality of rules issued by the Indian authorities regarding the taxation of services, rendered outside India, just because the service recipient is located in India or have permanent establishment in India.⁸

Emily Cauble from DePaul University - College of Law has prepared an article entitled *Was Blackstone's Initial Public Offering Too Good to Be True?: A Case Study in Closing Loopholes in the Partnership Tax Allocation Rules*, addressed the issues of tax incentives that can benefit some American companies, by forced interpretation of the law or with legal authorities.⁹

2. Content

Subject research data were extracted from the database formally published by the tax authorities, being selected a sample of 2,098 complaints, a total of 68,809 total complaints extracts, which represents a rate of 3.04% of the total complaints filed, the sample being representative. The total number of complaints was determined based on the general rule that, complaint filed by a taxpayer includes in turn, one or more articles challenged. In terms of research methodology, methods were used both quantitative and qualitative methods.

Normative acts were surveyed following: Law no. 19/2000 on public pensions and other social insurance rights, published in the Official Gazette no. 140/1 April 2000, Law no. 76/2002 on unemployment and stimulate employment, published in the Official Gazette 103 of February 6, 2002, Law no. 346/2002 on insurance for work accidents and occupational diseases, published in the the Official Gazette. 454 of 27 June 2002, Law no. 571/2003 regarding the Fiscal Code, published in published in the Official 927 of 23 December 2003, Law no. 95/2006 on healthcare reform, published in the Official Gazette no. 372 of 28 April 2006, Law no. 200/2006 regarding the establishment and use of the guarantee fund for salary payment, published in the Official Gazette no. 453 of 25 May 2006.

In further study, we sorted the data collected and based on quantitative methods, we estimated the extent of contestation of articles in the field of social contributions.

In order processing, we defined the following general empirical testing function:

General function estimating the degree of challenge to the rules in area of social security contributions: $h_i(Cs_i)$

We define the function:

$h: R^{+*} \rightarrow R^{+*}$, where

$h_{1i}(Cs_{1i})$ represents general function on estimating the degree of challenge to the rules relating to social security and is given by:

$h_{1i}(Cs_i) = h(\xi_{1i}, \xi_{2i}, \xi_{3i}, \xi_{4i} \dots \xi_{ni})$, where

$0 \leq h_{1i}(Cs_{1i}) \leq 100$ and

$\xi_{1i}, \xi_{2i}, \xi_{3i}, \xi_{4i}, \dots, \xi_{ni} \in [0; m]$, $i \in [0; 68809]$.

In this case, the degree of challenge to the rules on social security contributions, $h_{1i}(Cs_{1i})$ is given by:

$$h_{1i}(Cs_{1i}) = h(\xi_{1i})/h(\xi_{1i}) + h(\xi_{2i}) + h(\xi_{3i}) + \dots$$

$$\dots + h(\xi_{ni}) \times 100, \text{ where}$$

$\xi_1, \xi_2, \xi_3, \xi_4, \dots, \xi_{ni}$ - represents the section of the contested tax rules in area of social security contributions

m - represents item number of the laws subject research matters raised by objectors social contributions where, $m \in \mathbb{Z}_+$

i - represents tier appeal represents made by taxpayers in matters of social security contributions.

⁶ Paul L. Caron, Pepperdine University - School of Law, James R. Repetti, Boston College - Law School, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200270, Pepperdine Law Review, Vol. 40, p. 1255, 2013, Boston College Law School Legal Studies Research Paper No. 280, U of Cincinnati Public Law Research Paper No. 13-02 January 13, 2013

⁷ Robert Carroll, Ernst & Young LLP, Alan D. Viard, American Enterprise Institute, Scott Ganz, American Enterprise Institute (AEI), *The X Tax: The Progressive Consumption Tax America Needs?*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2221917, December 1, 2008, AEI Tax Policy Outlook, 2008, No.4

⁸ Avneesh Arputham, *Constitutionality of Taxing Services Provided and Received Outside India*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1691785, October 13, 2010

⁹ Emily Cauble, DePaul University - College of Law, *Was Blackstone's Initial Public Offering Too Good to Be True?: A Case Study in Closing Loopholes in the Partnership Tax Allocation Rules*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2236325, Florida Tax Review, Vol. 14, Number 5, 2013, DePaul Legal Studies Research Paper No. 13-06

The parameters of this function were extracted based on questionnaire.

Following the development of the study on estimating the degree of contestation the rules on social contributions we obtained the following results:

Table 1 Contestation laws based social contributions - Law no. 19/2000 on public pensions and other social insurance rights

Tax rules	Area	Number of appeals	Degree of appeal (%)
24	Monthly basis for calculating social insurance contributions payable by the employer	354	37.5 %
23	Monthly basis for calculating the individual social insurance contribution	352	37.2 %
18	Defining taxpayers	94	9.9%
5	Categories of insured persons	85	9.0%
31	Failure to pay social insurance contributions	46	4.9%
27	Social insurance	13	1.4%
3	Organizing CNPAS	1	0.1%
Total	X	945	100%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

Table 2 Contestation laws based social contributions Law no. 95/2006 on healthcare reform

Tax rules	Area	Number of appeals	Degree of appeal (%)
257	Monthly basis for calculating social insurance contributions payable by the employer	185	62.7 %
258	Monthly basis for calculating the individual social insurance contribution	52	17.6 %
211	Defining taxpayers	47	15.9 %
363 ¹	Categories of insured persons	11	3.7%
Total	X	295	100%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

Table 3 Contestation laws based social contributions Law no. 76/2002 on pt. unemployment and stimulate employment

Tax rules	Area	No. of appeals	Degree of appeal (%)
26	Calculation of employer contributions to the unemployment fund	327	49.3%
2	The general framework of rules on unemployment	263	39.7%
19	The categories of insured (required)	28	4.2%
31	Deadline for submission of declarations	22	3.3%
23	Unemployment insurance budget	6	0.9%
24	Establishment contribution to the unemployment fund	6	0.9%
27	The calculation of employee contributions to the unemployment fund	6	0.9%
29	The quotas of the contribution to the unemployment fund	4	0.6%
20	The categories of insured (optional)	1	0.2%
Total	X	945	100.0%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

Table 4 Contestation laws based social contributions - Law no. 346/2002 on insurance for work accidents and occupational diseases

Tax rules	Area	Number of appeals	Degree of appeal (%)
101	The application contravention sanctions	54	42.9%
5	The categories of persons compulsory insured	39	31.0%
96	Taking the fund reserves	15	11.9%
140	Fixed contribution of 0.5%	8	6.3%
108	Exemption actions in court for judicial stamp duty	7	5.6%
6	Categories of insured persons option	2	1.6%
10	Drawing statement on insurance for work accidents and occupational diseases	1	0.8%
Total	X	126	100%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

Table 5 Contestation laws based social contributions - Law no. 200/2006 regarding the establishment and use of the guarantee fund for salary payment

Tax rules	Area	Number of appeals	Degree of appeal (%)
7	The calculation of the contribution to the guarantee fund	17	100%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

Table 6 Contestation laws based social contributions- Law no. 571/2003 regarding the Fiscal Code

Tax rules	Area	Number of appeals	Degree of appeal (%)
296^18	Calculation, withholding and payment of social security contributions	52	100%

Source: own, based on data extracted from the website of the National Agency for Fiscal Administration

3. Conclusions

After analyzing the results, we obtained the following conclusions:

I. Articles of the Law no. 19/2000 on public pensions and other social insurance rights that were most frequently challenged by taxpayers were as follows:

- Article 24, which has a degree of contestation of 37.5% of the total subject research articles being challenged 354 times;

- Article 23 which has a degree of contesting of 37.2% of the total subject research articles being challenged 352 times;

- Article 18 which has a degree of contesting of 9.9% in the total number of articles submitted research being contested 94 times;

- Article 5 which has a degree of contesting of 9% of the total subject research articles being challenged 85 times;

- Article 31, which has a degree of contesting of 4.9% of the total subject research articles being challenged 46 times;

- Article 27 which has a degree of contesting of 1.4% of the total subject research articles being challenged 13 times;

- Article 3 which has a degree of contesting of 0.1% of the total subject research articles being challenged once;

II. Articles of the Law no. 95/2006 on healthcare reform that were most frequently challenged by contributors were:

- Article 257 which has a degree of contesting of 62.7% of the total subject research articles being challenged 185 times;

- Article 258 which has a degree of contesting of 17.6% of the total subject research articles being challenged 52 times;

- Article 211 which has a degree of contesting of 15.9% of the total subject research articles being challenged 47 times;

- Article 363 ^ 1 which has a degree of contesting of 3.7% of the total subject research articles being challenged 11 times;

III. Articles of the Law no. 76/2002 on the unemployment insurance system and stimulation of employment were most frequently challenged by contributors were:

- Article 26 which has a degree of contesting of 49.3% of the total subject research articles being challenged 327 times;

- Article 2 which has a degree of contesting of 39.7% of the total subject research articles being challenged 263 times;

- Article 19 which has a degree of contesting of 4.2% in the total number of articles submitted research being challenged 28 times;

- Article 31, which has a degree of contesting of 3.3% of the total subject research articles being challenged 22 times;

- Article 23 which has a degree of contesting of 0.9% of the total subject research articles being challenged 6 times;

- Article 24, which has a degree of contesting of 0.9% of the total subject research articles being challenged 6 times;

- Article 27 which has a degree of contesting of 0.9% of the total subject research articles being challenged 6 times;

- Article 29 which has a degree of contesting of 0.6% of the total subject research articles being challenged 4 times;

- Article 20 which has a degree of contesting of 0.2% of the total subject research articles being challenged once;

IV. Articles of the Law no. 346/2002 on insurance for work accidents and occupational diseases were most frequently challenged by taxpayers were as follows:

- Article 101 which has a degree of contesting of 42.9% of the total subject research articles being challenged 54 times;

- Article 5 which has a degree of contesting of 31% of the total subject research articles being challenged 39 times;

- Article 96 which has a degree of contesting of 11.9% of the total subject research articles being challenged 15 times;

- Article 140 with a grade of 6.3% of the total contesting submitted research articles being challenged 8 times;

- Article 108 which has a degree of contesting of 5.6% of the total subject research articles being challenged 7 times;

- Article 6, which has a degree of contesting of 1.6% of the total subject research articles being challenged 2 times;

- Article 10 which has a degree of contesting of 0.8% of the total subject research articles being challenged once;

V. Articles of the Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for salary payment which were most commonly challenged by taxpayers were as follows:

- Article 101 which were contested by 17 times;

VI. Articles of the Law no. 571/2003 regarding the Fiscal Code which were most frequently challenged by taxpayers were as follows:

- Article 296^18 which has been challenged 54 times.

Based on the results it follows that the tax rules with the highest degree of contestation are those relating to the basis for calculating social security contributions, because the authorities have extended the tax base in the period under study and the rules were not very clear in this regard. We recommend more precise definition of terms and their stability while tax.

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