

## Taxation of Undeclared Assets

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### Abstract

*For the present paper we can use as motto the famous quotation of Henry Ford: "I am ready to account for any day in my life, but don't ask me how I made my first million".*

*After at least two decades of fiscal chaos, a period which allowed the accumulation of "grey fortunes" whose origins and extent are uncertain, the rule of law must enter an age of normality and thus the question of the complete taxation of assets arises in the area of fiscal law.*

*The problem of the taxation of undeclared assets finds its remedy in the present Fiscal Procedural Code in the institution of the checking of personal financial status. The checking of personal financial status allows fiscal inspectors to compare the expenditures of a tax payer (displayed assets) to the declared income and to issue a decision of fiscal taxation for the difference in case of discrepancies.*

*De lege ferenda, we suggest to amend the present regulation with an initial statement of patrimony.*

**Key words:** taxation, fiscal control, checking of personal financial status

**J.E.L. classification:** K34

### 1. Introduction

The ambiguous reality of the apparition of great fortunes in Romania after the Revolution of 1989 in the context of the slough, even social chaos which followed is of notoriety, yet difficult to prove. The natural laws of capitalism say that production means must be accumulated in private property by entrepreneurs. This is exactly what happened. But beyond this unclear period the rule of law must enter a stage of normality and this entails correct business practices, rigorous law enforcement, legal liability, etc. In accordance to this movement of turning Romanian society towards normality, the question of the complete taxation of assets arises in the area of fiscal law.

The problem of the taxation of undeclared assets finds its remedy in the present Fiscal Procedural Code (Law no. 207/2015 with subsequent modifications) in the regulations comprised by Title VI (Fiscal control), Chapter IV (Checking of personal financial status by the central fiscal organ). Also relevant to the issue is the NAFA (National Agency for Fiscal Administration) Order no. 3733 to approve indirect methods to establish income and the procedure to apply them (published in the Official Gazette, Part I, no. 981 on 30 December 2015).

### 2. Fiscal inspection and checking personal financial status

According to applicable legal norms, the **fiscal inspection** is the activity which has as object checking the legal nature and conformity of fiscal declarations, the correctness and exactness of the performance of fiscal obligations as established by the tax payer, the observance of the stipulations of the fiscal and accounting legislation, the checking or assessment, if the case may be, of taxation bases and corresponding situations, the assessment of the differences of main fiscal obligations (art 113 Fiscal Procedural Code).

Fiscal inspection can be exercised on persons and entities, regardless of their organisation form, which have the obligation to establish, retain or pay the fiscal obligations stipulated by the law.

The forms of fiscal inspection are: a) general fiscal inspection and partial fiscal inspection (Şaguna, D.D.; Radu, D. I., 2016, p. 225).

**Checking personal fiscal status** is a special form of fiscal control, totally separated from fiscal inspection. The fiscal organ has the right to perform a fiscal checking of the personal fiscal status of natural persons in relation to income taxation. This checking has as object the examination of the totality of patrimonial rights and obligations, of treasury flows and any other relevant elements to establish the real fiscal status of the natural person being checked. (Popescu, E., 2016, internet).

### 3. Procedure for checking personal fiscal status

**Competence** Present provisions establish that the fiscal inspection for natural persons subject to income taxation is done throughout the entire territory of Romania by the Direction for Fiscal Inspection, competent structure with NAFA.

**Checking financial status** cannot be performed for each taxpayer separately, that is why there must be identified those persons who (statistically) risk having undeclared assets.

To check personal financial status of the natural person, the fiscal organ performs **preliminary activities**:

- a) risk analysis to establish probable risk for a group of natural persons or punctual cases.
- b) selecting the group of persons to be subjected to documentary preliminary fiscal checking.

To this purpose, fiscal inspectors proceed with the analysis of all information, documents and other evidentiary means related to the fiscal status of the natural person being checked, obtained inclusively by asking third parties, authorities or public institutions both in the country and abroad for information based on international conventions for information exchange or, where they do not exist, based on mutuality.

Verification consists of comparing the income declared by taxpayers or income payers, on the one hand, and on the other hand, the personal fiscal status of the taxpayer. This checking is performed taking into account the documents and information issued/ obtained from the central fiscal organ, which are relevant to determine the fiscal status, with the notification of the natural person.

**The indirect methods** to establish adjusted band rate are provided in a norm mentioned above, i.e. *The Order of the NAFA Chairperson no 3733/2015*. These methods are:

- the method of sourcing and using the fund – it consists in comparing expenses to declared assets during the checked period;
- the method of treasury flows – it consists in the analysis of bank accounts and cash flows to establish the movements of monetary availability, its association to income sources and its use;
- the method of the net patrimony – it consists in determining taxation income based on the increase of the value of the net patrimony of a taxpayer during one fiscal year. The increase or decrease of the value of the net patrimony is determined by comparing the value of the net patrimony at the beginning of the period to that at the end of the period.
- If the fiscal organ notices a significant difference between the income declared by the taxpayers, on the one hand, and the personal fiscal status on the other hand, it will continue the checking by communicating the checking notification and it will establish the adjusted band rate by using indirect methods.
- The difference is significant if between the estimated income calculated based on the personal financial status and the income declared by the taxpayers the difference is greater than 10%, but no less than 50.000 lei, as the Code of Fiscal Procedure establishes with art. 136 par. (6).

In case the fiscal organ notices significant differences, it will ask the taxpayer to present justifying documents or other clarifications relevant for their financial status within 60 days from the communication of the checking notification, under the sanction of incapacity. The deadline can be extended 30 days, only once, at the justified request of the taxpayer and with the consent of the fiscal organ.

The taxpayers subjected to preliminary fiscal checking must present, at the request of the fiscal organs, **a statement of patrimony and income**. The patrimony elements which must be declared by the natural person subjected to the checking of personal fiscal status are the following:

- Immovable assets: land, buildings, other immovable assets;
- Movable assets: a) means of transport (land/ naval/ air); b) assets in the form of precious metals, jewellery, art and religious objects, art and coin collections, antiquities, objects that are part of the natural or universal cultural patrimony whose acquisition value exceeds 15000 lei; c) animals, included breed animals or animals taking part in competitions/ races, whose value exceeds 15000 lei; d) financial assets: bank accounts and deposits, investment funds, equivalent saving and investment forms, investments, direct investments and loans; e) other assets, titles and/ or certificates whose individual value exceeds 10000 lei; f) insurance bills, except for car insurance bills; g) expenses: personal expenses; expenses with persons in the care of the taxpayer.

Not filing the statement of patrimony within the deadline stipulated by the Code of Fiscal Procedure (15 days, if the request for statement occurs during checking or 60 days if the request of the document by the authorities occurs together with the communication of the checking notification) is considered contravention and it is sanctioned with a fine between 10000 lei and 50000 lei.

**Suspension of the checking** can be decided in certain expressly determined cases: a) to perform an expert appraisal in accordance with the present code; b) to perform research in order to identify some persons or to establish the realities of some transactions; c) at the written request of the natural person as a result of the occurrence of objective situations, confirmed by the central fiscal organ assigned to performed the checking, which result in the impossibility of verification. During one check, the natural person can request the suspension of the check only once; d) to request additional information from third parties or from similar fiscal authorities from other countries; e) at the suggestion of the structure coordinating the natural persons fiscal checking activity in order to valorise information resulting from other checks, received from public authorities or institutions or from third parties. The date the checking activity is suspended is communicated to the natural person by a suspension decision. After the conditions generating suspension no longer apply, the personal financial status checking is resumed and the date is communicated in writing to the natural person undergoing the investigation.

**Checking report** The result of the personal financial status check is noted down in a written report which presents the facts noticed. The documents used to compile the report, the documents of the meetings and any other documents related to the report are annexed to the report regarding the results of the check. The documents presented by the natural person undergoing fiscal checking are presented to the central fiscal organ and turned in under signature. Upon finalising the personal financial status check, the central fiscal organ presents the report and its fiscal consequences to the natural person and allows the possibility to express personal points of view. The natural person has the right to present in writing, within 5 working days from the date the conclusions were presented, their point of view regarding the report of the personal financial status check, a point of view which is annexed to the checking report and in relation to which the fiscal organ pronounces during the report.

**Tax decision** The checking report is used to issue the tax decision or, if the case may be, a decision to terminate the checking procedure, if the band rate is not adjusted. The decision to taxa or to terminate the checking procedure is communicated to the natural person being checked.

#### **4. Short presentation of the results obtained as a result of income verification of natural persons**

In a press declaration (9 May 2017), the chairperson of the Direction for the Control of Natural Persons Income with the National Agency for Fiscal Administration made public the results obtained as a result of the verification of natural persons income.

Fiscal inspectors have discovered undeclared income of over 119.5 million lei with the controls undertaken between 2016 and April 2017 with natural persons with high assets and fiscal risk, while the declared income of the persons being checked amounted only to 3.9 million lei. In this

context, NAFA has calculated additional payment obligations to the state budget of approximately 27 million lei. During the control or immediately after it, a total of 4,292,306 lei has been cashed in, while foreclosure procedures were ordered to cover the difference.

The NAFA representative added that, as far as the income differences noticed with the checking of personal financial status are concerned, these are normally the result of loans to companies and building acquisitions. (Pavel A.I., 2017, InfoTVA.ro).

## 5. Conclusions

Checking personal financial status is a special form of fiscal control and it implies the application of indirect control methods. These methods allow fiscal inspectors to compare the expenses of a taxpayer (displayed wealth) to the declared income and to issue a tax decision for the difference if there are discrepancies between the two.

The main criticism to be brought to the present regulation is the lack of “a zero moment” – the initial statement of patrimony. By this, one must understand a limited period of time during which persons knowing they have assets of any type whose origin cannot be justified, could declare these assets, while the applied tax should be small enough so as to not to make the elusion of the law worthwhile (Biriş, G, 2012, p. 202-204). The initial statement of patrimony presents numerous practical advantages. After decades of fiscal chaos it could represent “a zero moment”, a fiscal amnesty which would really allow the severe and rigorous application of fiscal law to follow. Without such a zero moment, the verification of personal financial status could be used in political or personal vendettas, and such a witch-hunt with the corresponding array of abuse would not be useful to society as a whole. If persons owning assets were not given the possibility to declare them in favourable conditions, there could also be the danger of the emigration of local capital to fiscal paradises, which is not desirable.

*De lege ferenda*, we suggest to amend the present regulation with an initial statement of patrimony.

## 6. References

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