

## **CONSIDERATIONS REGARDING THE INFLUENCE OF THE MINIMUM TAX ON THE FISCAL BURDEN OF THE COMPANIES**

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*Taxation can be considered an efficient way to stimulate the real economy, but during economic crisis, an excessive and/ or a badly executed fiscal pressure can cause perturbations to the real economy, more exactly to the economic agents whose financial statu-quo is precarious: thus, if the owed taxes can not be placed at intervals, and, moreover, if they are "stimulated" to use new ways to diminish the fiscal duty, huge damages will be brought to the real economy and to the state itself, the imminent bankruptcy growing the economic crisis. Once the adoption of OUG no 34/ 2009, the situation becomes even more difficult, due to the impediments which the minimum taxation brings to the fiscal principles, causing a certain inequitable level among the tax payers whose incomes are situated to the limit of the instalments owing to the uncorrelation of the fiscal duty with the contribution power, and to the way of establishing the incomes.*

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In the periods of economic crisis , as it is the one we face at present , the need for financial public resources increases considerably mainly after the increase in volume of the public expenditures which are enforced to be applied in the field of assistance and social protection but also as a consequence of the need for public financing of certain economic programs meant to decline the effects of the economic crisis and , eventually surpass it .

At the same time, most of the times, it is witnessed a degradation of the degree of collecting the public incomes from compulsory fiscal levies, the natural tendency for the fiscal evasion of taxpayers as a origin factor of the phenomenon, manifesting more heavily than in any other period.

The attraction in the public system of many incomes can be carried out , in such situations, only by improving the collection , either through punitive methods by levying large fines , penalties and administrative sanctions, or concessive methods to postpone or reschedule the payment of debts to the budget and extend the payment period for the uncollected outstanding debt according to the possibilities to finance the budget.

In order to surpass the crisis many countries have passed fiscal legislations which allow the direct negotiation of incomes, on a legal basis, between the .taxpayers and the fiscal authorities, allowing some delays or reschedule the due time for the payment of incomes till the redress of the company , useful in case of liquidity crisis for the well-meant tax payers that are in a real

impossibility to pay the debts to the state, owing to the non collection of their own debts to the third parties and also the decrease of the fiscal duty in case of certain levied incomes.

Thus, in order to overcome a crisis which can lead to the instability of economy by 3% this year, Hungary has already taken several measures to reduce the taxes on companies and salaries, increase the taxes on consumption and property and decrease of the public expenditures. Bulgaria is another example, where, recently it has been introduced a tax relief for a period of 5 years for the investors in unfavorable regions. In the Czech Republic, the rate of taxes on income was diminished from 21% to 20%, the rate of social health was also diminished, and the reimbursements of value-added tax are being solved more rapidly for the taxpayers that submit the fiscal statement electronically.

Furthermore, the developed countries from the European Union act through various fiscal methods against the crisis, thus, in Belgium, for the first three semesters from 2009, the companies which face financial difficulties will not be penalized if they delay the payment for the value-added tax. Another example is Great Britain where the rate of value-added tax was diminished for a year, from 17,5% to 15% and it was allowed the delay concerning the payment of taxes for the companies which were affected by crisis.

In Romania, a first fiscal measure with direct effect on the economic power of taxpayers-corporate bodies, the purchasing power and the living standard of taxpayers-natural persons, was the increase of contributions quota of social insurances. This measure determined, in fact, their decrease in 2005 (31,3%, from February 2009 instead of 31,5% in 2005<sup>244</sup>), thus cancelling a large part of the predicted effects of the measure meant to decrease the fiscal impact on the paid work. Moreover, if we take into account that the effects upon modification of the fiscal system, upon the increasing degree of taxpayers' fiscal conformation owing to their inertia, they do not feel the effects immediately, on a short term, we might assume that, in fact, they did not have time to turn up at the provided level.

The fiscal relaxation in levying the incomes on salaries was considered one of the main barriers in order to eliminate or reduce the unqualified work, as a result, but also to maintain the labor force, especially the qualified one, from the perspective of the integration in the European Union and the free flow of labor force at the European level.

The increase of contributions at the public system of pensions, in the present period of crisis will act, as a pressing factor, in two ways: on the one hand, the net salaries of the employees will be decreased, on the other hand, such type of measure will press the budgets of the companies already affected by the deregulation of the national currency in comparison to the euro currency and the reduced access to finance.

Under these conditions, the solution for tax burden increase, with the hope of collecting an increased volume of public financial resources, does not appear to be indicated, the most probable effects being those of compromising the improvement of business enterprises affected by the financial crisis and the emphasis of tax evasion.

But the measures of enhancing taxation concerned, still, the growth on taxing pressure is directly exercised by company taxes (profit tax and micro-enterprises income tax).

Thus, starting with the 1st of May 2009<sup>245</sup>, for economic units that pay profit tax and, also for those that pay micro-enterprises income tax and regardless of activity domain, the tax burden is established at a minimum level, determined by total yearly incomes. This tax is shown in table no.1.

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<sup>244</sup> Stela Aurelia Toader, "Fiscal evasion in Romania during the transition period", Pro Universitaria Publishing House, Bucharest, 2007.

<sup>245</sup> OUG no.34/2009, regarding the budgetary modification for the year 2009 and the reglementation of certain financial-fiscal measures, published in M.Of. no 249/2009, modified in M.Of. no.254/2009.

**Table no. 1: Minimal taxation grid under OUG no. 34/2009**

Total yearly income (lei)	Minimum yearly tax (lei)
0-52.000	2.200
52.001-215.000	4.300
215.001- 430.000	6.500
430.001 – 4.300.000	8.600
4.300.001 – 21.500.000	11.000
21.500.001 – 129.000.000	22.000
Over 129.000.001	43.000

By introducing the minimum tax, they prejudice too, once again, fiscal principles, that already aren't very respected in our country.

The new fiscal settlement violates, first of all, the principle of imposing efficiency, provided in article 3 letter d) from the Tax Code, under which the financial law must assure long term stability of rules and tax norms, so that unfavorable retroactive effects be avoided for individuals and legal entities, in relation to taxation in force on the date they made some major investment decisions.

Furthermore, to ensure compliance with the principle of imposing efficiency, article 4 from the Fiscal Code clearly states terms and conditions of modification and completion. So, the Fiscal code can be modified and added only by law, promoted, usually, 6 months before the date of it coming into force, respectively, the first day of the next year. Under these conditions, the minimum tax should have come into force from the 1<sup>st</sup> of January 2010.

Regarding the principle of tax equity, principle formulated for the first time in 1776, by the father of political economy, Adam Smith, who stated that „taxpayers of every state must contribute, as possible, with taxes depending on the revenue that they obtain”<sup>246</sup>, experts from a group of consulting firms from BIG 4<sup>247</sup> (PricewaterhouseCoopers, KPMG, Ernst&Young, Deloitte Tohmatsu&Touche) think that the new minimum tax set for companies, presents exactly the features of a gross sales tax, considering it a method of poor taxation, because:

-It implies reiterated taxes;

-It's inequitable;

-It isn't correlated with the paying capacity of taxpayers;

Regarding the correlation of tax burden with the power of contribution, the minimum tax introduces a certain degree of inequity amongst tax payers-legal entities, best illustrated in the case of incomes located on the edge cuts.

Thus, considering, two taxpayers that have a yearly income of 215.000 lei and, respectively 215.001 lei, at the same taxable profit of 25.000 lei, taxpayers will bear different tax burdens. The first will pay tax 4.300 lei, thus bearing a financial pressure of 17,2%, and the second will pay tax 6,500 lei, bearing a financial pressure of 26%.

On the other hand, by way of settlement the minimum tax, taxpayers are obliged to receive, depending on the income cut they settle on, bigger profits than the minimum tax. Thus, all of the profit will be seized as the minimum tax, taxation thus eliminating the reason from any economic activity.

The new tax measure is justified by the political governor through the attempt of discouraging taxpayers from registering unreal expenditures for tax reduction. But, by this measure the

<sup>246</sup> Iulian Vacarel and the co-authors, „Finante publice”, The 6-th Edition, Publishing house Didactica si Pedagogica, Bucharest, 2007, page.369.

<sup>247</sup> Memoir from the group of consultancy companies BIG 4 regarding the technical aspects from the Emergency Ordinance of the Government no.34/2009, regarding the relementation of certain financial and fiscal measures for the year 2009.

political governor rather indicates to the payer, the level of expense that can be deducted from taxable incomes, so that he can limit his tax burden to the level of the minimum tax.

In determining this level of expense, we'll start from the taxable profit whose profit tax equals the minimum tax, and indicates the maximum threshold of taxable profit to which the tax payer can come under the minimum tax.

**Table no. 2: Maximum level of taxable profit, established on stages of income, till the taxpayers are subject to the minimum tax**

Total yearly income (lei)	Taxable profit	Profit tax	Minimum tax under OUG no. 34/2009
0-52.000	13.750	2.200	2.200
52.001-215.000	26.875	4.300	4.300
215.001- 430.000	40.625	6.500	6.500
430.001 – 4.300.000	53.750	8.600	8.600
4.300.001 – 21.500.000	68.750	11.000	11.000
21.500.001 – 129.000.000	137.500	22.000	22.000
Over 129.000.001	268.750	43.000	43.000

Above these levels of taxable profit, the taxpayer doesn't come under the coverage of minimum tax and will bear a profit tax established at 16%.

It can be observed that, in the case of the first income cut, the taxpayer that makes a taxable profit of up to 13.750 lei, will bear a tax of fixed value of 2.200 lei, Thus, until this level of profit, the minimum tax shows a strong tendency to regress, because the share of the minimum tax included in the taxable profit gets bigger as it goes down. Otherwise, this regress manifests itself in every one of the income cuts, until it reaches that maximum level of taxable profit that determines the election of minimum tax.

Considering the income tax cuts that determine minimum tax application, the level of deductible expenses, that will limit the tax burden to its lowest, can be established.

For contributors that register total yearly incomes between 13.750 lei (approximately 3.200 euro) and 52,000 lei, the level of deductible expenses for which the taxpayer comes under the minimum tax is:

-at a level of income of 13.750 lei, regardless of the level of recorded expenses, the taxpayer will owe a minimum tax of 2.200 lei

-at a level of income situated at the upper limit of the cut, the taxpayer that registers deductible expenses that exceed 73,5% of the income, will come under the minimum tax.

For the second income cut, between 52.001 and 215.000 lei, the level of deductible expenses for which the taxpayer comes under, the minimum tax is:

-in case of an income situated at the lower limit of the cut, over any level of deductible expenses that exceed 48,31% of total incomes, he will owe a minimum tax of 4.300 lei.

-in case of an income situated at the upper limit of the cut, over any level of deductible expenses that exceed 87,5% of total incomes, he will owe a minimum tax of 4.300 lei.

-the minimum level of deductible expenses for which the taxpayer owes the minimum tax is illustrated in table no. 3.

**Table no. 3: Minimum level of deductible expenses that generate the minimum financial burden**

Minimum share of deductible expenses in all registered incomes	Minimum tax
0%-73,5%	2.000
48,3% - 87,5%	4.300
81,1% - 90,5%	6.500
87,5% - 98,7%	8.600
98,4% - 99,7%	11.000
99,3% - 99,9%	22.000
99,8%	43.000

The relation based on which it can be established over which the level of registered expenses, a taxpayer will come under the minimum tax is:

$$k = 1 - \frac{I_{\min}}{V * 16\%}, \text{ where}$$

$k$  - deductible expenses share in the total yearly income;

$I_{\min}$  - minimum tax under OUG no. 34/2009;

$V$  - total yearly income.

For example, a taxpayer that makes a total yearly income of 4.300.000 lei (approximately 100.000 euro) will pay a minimum tax of 8.600 lei, if his taxable profit is at most 53.750 lei. At this level of chargeable profit it is reached in the conditions in which the expenses share included in the total yearly income is at least 98,7%.

If the deductible expenses share would be 98,6% the taxable profit reaches 60.200 lei, and the owed tax will be 9.632 lei, bigger than the minimum tax.

In these conditions it can be appreciated that, actually, the minimum tax affects only those taxpayers that register very high expense levels, one of the reasons being that of tax burden shrinkage. From this perspective, adoption of minimum tax may be considered a good measure to attract an area of taxation of unstated income.

Collateral victims of such measures will however be financially disciplined taxpayers, but which are strongly affected by the economic crisis

Thus, minimum tax will affect equally, those taxpayers who, under previous regulations would owe a tax below the minimum established in the present, that is, exactly those with reduced contribution power. Here it is, especially in the case of taxpayers who earn income located in the lower limit of the second cut of income, approximately 125.000 euro.

Another aspect refers to the way of establishing incomes that sit at the base of the minimum tax grid. Thus, the new regulations specify that for framing in the total revenue cut, the total incomes will be taken into account, obtained from any source, registered at 31st of December of the previous year, with some exceptions. Under these conditions the new regulation obliges tax payers into paying a tax established on a material amount of taxable matter made in a period prior to the reporting one. One can easily foresee that, based on the current economic crisis, for most economic units, revenues and profit obtained or hoped to be obtained in the financial year 2009, will be greatly reduced compared to the ones in the financial year 2008, the tax burden needn't, once again, account for the contribution power of taxpayers.

In conclusion it can be said that the minimum tax introduces an elevated degree of financial inequity to the taxpayer, owing to the discrepancy of tax burden with the power of contribution,

regressive taxation but also determining revenues on which the correlation with certain minimum tax cut, encouraging, at the same time, new forms of diminishing the tax burden.

For micro-enterprises income tax payers, the discrepancy of owed tax with registered income, is even more obvious. So for payers with incomes situated in the second cut tax will be between 8,26% and 3% from the registered income, while, for payers with incomes in the third cut, tax remains 3% from the income. For the taxpayers with the lowest incomes, it will vary between 100% and 4,23%. Under these conditions, fiscal equity or social justice regarding incomes cannot be provided.

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