

THE EFFECTS OF THE MEASURES REGARDING SEQUESTRATION OF CASH IN TAX DEBTORS' BANK ACCOUNTS

Herbei Marius

West University of Timisoara

Faculty of Economics and Business Administration

Bene Gheorghe-Florin

West University of Timisoara

Faculty of Economics and Business Administration

Deliman Eugen

West University of Timisoara

Faculty of Economics and Business Administration

Fiscal administration seeks rapid intervention in the action of preventing the formation of budgetary arrears and accomplishing public financial resources at the time scheduled by the fiscal authorities to collect public financial resources. The establishing of the immediate measure blocking of bank accounts of economic agents who recorded debt to the consolidated general budget of the state, is an essential measure necessary to avoid the forward slip of other creditors, debt recovery actions, having as consequence the preventing of taxpayers as state debtors to organize their insolvency. The present study aims to draw attention upon the effects of blocking the bank accounts on the evolution of budgetary revenues through enforcement measures during 2006-2009, and the registering of more favorable results regarding collection should take into account the immediate legitimate interest of the budgeted creditor, but should also make sure that the rights of taxpayers are observed.

Keywords: bank account sequestration, compulsory enforcement, state-financed creditor, establishment of sequestration, sequestration of third party.

JEL code: G2, H2, H3

1. Introduction

Sequestration is the method of compulsory enforcement by which the fiscal creditor pursues, on behalf of his tax claim, the amounts that a third person owes the prosecuted debtor.

This involves blocking the actions of the sequestered third party, who is in his turn the debtor of the prosecuted taxpayer, of the amounts owed by the latter and the direct payment to the pursuing creditor.

The establishment of sequestration creates a legal relationship between the **state-financed creditor** (the state through the fiscal administration, a local community, etc.) and the **sequestered third party**, the legal relationship grafted on the existence of two other legal relationships: one between the creditor and the and, respectively, between the tax duty's debtor - as a creditor - and the sequestered third party.

Compulsory enforcement by sequestration may extend to any traceable amounts representing income and cash in lei and foreign currencies, securities or other intangible movable property owned and / or due under any title to the debtor by third parties or which are to become due to the debtor and / or will get hold of in future on the basis of the existing legal relationships.

The amounts representing the incomes of the debtor as a natural person, accomplished as an employee, in the form of salaries and other forms of periodic income resulting from employment, pensions of any kind, as well as any aid or benefit of special purpose are subject to prosecution only in the conditions foreseen in art.409 in the Code of Civil Procedure.

2. Sequestration of bank accounts

The sequestration is established by the executing agency by establishing a notice of the attachment, which is transmitted sequestrated third party, by registered letter, accompanied by proof of receipt along with a certified copy of the writ of compulsory enforcement. The sequestration is not subject to validation. The debtor will also be informed about the **establishment of sequestration**.

After the establishment of sequestration the sequestrated third party is required to make statutory deductions immediately and transfer the amount into an account designated by the executionary body to the full recovery of the budget debt, while communicating in writing about the existence of other creditors.

The sequestration involves three parties in opposition: one who administers or request its application (in this case, the Administration through its implementing agency) called the creditor, who is obliged to him/her - called sequestrated debtor, and sequestrated third party (the taxpayer's debtor).

3. Conclusions

The collection of tax claims is a priority activity of the National Agency of Fiscal Administration, which seeks to rapid intervention within the action of preventing the formation of budgetary arrears and the acquiring of public financial resources to meet the deadlines set by the fiscal authorities to support the budget implementation at the level of public services according to the budget forecasts regarding the grounding of public institutions' budgets.

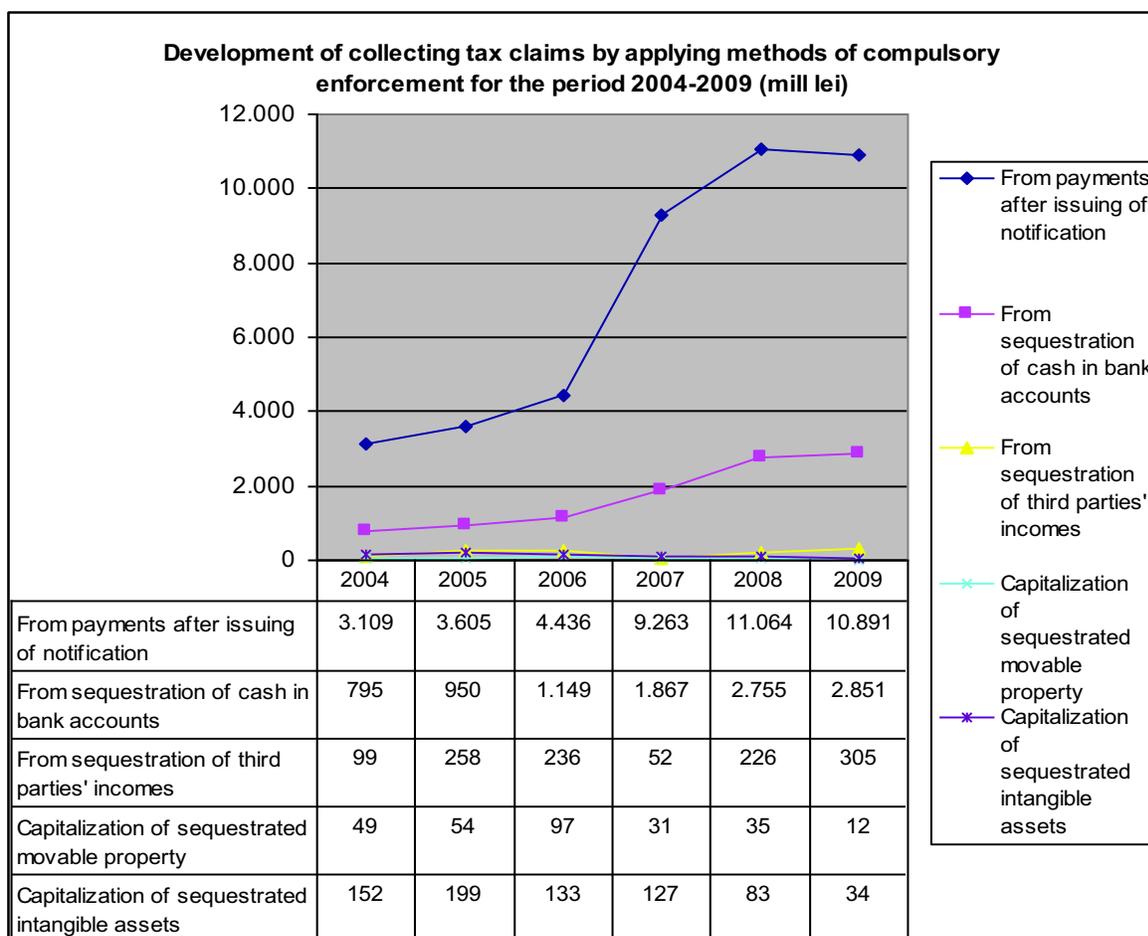
The premises of reaching the indicators regarding the collecting of budget revenues through the proceedings of compulsory enforcement of the sequestration of bank accounts should, according to our opinion, follow several directions of medium-term action such as:

- Development of IT systems for managing tax claims, including in the menu of the IT application the subsystems of fighting tax claims through the procedure of sequestration so as to ensure a complete collection of tax claims with the correct identification of the source of sequestrated incomes from accounts blocked by the executionary bodies.
- The setting-up of a database at the level of the National Agency of Fiscal Administration by the interaction and collaboration of public institutions, banks, central and local public authorities to enable the fiscal bodies the rapid identification of movable and intangible assets, as well as the incomes of taxpayers –debtors of the state, by the help of the responsible fiscal management structures.
- The organization of a database on administrative and fiscal solutions issued in situations of judicial action on established tax claims and the administrative and fiscal jurisprudence rendered by competent judicial courts in the cases of eliminating measures relating to the enforcement of tax claims, a database available to all civil servants in the administrative body, granting access to setting up unitary practices of management.
- The improvement of procedures for allocating the causes of prosecution and compulsory enforcement of pursuedtax claims on inspectors, allowing a hierarchical control of performing the duties specific to public office and thus raising the specific responsibility of the territorial fiscal body.
- Development of educational guid books on collecting tax debts on methods of enforcement, which should focus on specific aspects of implementation and enforcement measures, to identify new measures of raising government revenue collection in a term not exceeding 15 days over the tax duty's due date.
- Development of existing procedures, development of brochures and other instruments to regulate the recovery of goods seized, the distribution of amounts acquired by capitalization or, according to case, by blocking the bank accounts for overdue tax debts.

- Establishing a system of **performance indicators** to measure the rate of budget revenues collected by compulsory enforcement measures for potential taxpayers from among debtors and in the process of monitoring the state's revenue collection procedure.

- Identification and improvement of criteria for granting the scores for risk assessment regarding the collection of tax claims, within an IT integrated system / subsystem for risk analysis on incidents regarding lack of returns, allowing access at any time to the frame of taxpayers who have debts, and who increase **the risk of not succeeding to collect the tax claims**, subject to the application of functional measures of collecting and compulsory enforcement.

The compulsory enforcement by income sequestration, either cash in RON or foreign currency belonging to the debtor or owed to him by a third party or legal entity is the most easily realizable blocking of debtor's incomes by the office fiscal executioners. The IT applications for the tax claims' administration should be improved by including a subsystem for generating within the entire database of notifications regarding the sequestration of cash (executionary form MPF-NAFA code 14.13.12.99 / a) towards every bank at which the debtor taxpayers dispose of bank accounts.



Source: www.anaf.ro NAFA report of performance

Enhancing the measure of blocking the incomes in bank accounts by setting up the sequestration on debtor taxpayers' bank accounts mostly was the method of compulsory enforcement which contributed to the acquiring of budgetary resources. If in 2006 the returns by sequestration of bank accounts stood at 1148.68 million lei, the efforts of public administration by their NAFA

territorial offices were materialized by the blocking of bank accounts in 2007, the amount collected this way rising to 1866.99 million lei for the state's consolidated budget.

The computer issuing of the notifications regarding sequestration of bank accounts and monitoring the collection of tax claims reached a peak in 2008 with the issuance of a number of 1,645,026 notifications establishing bank sequestration, by which 2754.98 million lei were compulsory collected, the results being far superior to those registered by the fiscal administration in the previous years.

The year 2009 represented the turning point regarding the special administration of taxpayers, including the management system of large and average taxpayers and also of new taxpayers, so that at the end of the year the 1434 largest taxpayers, respectively the 19,114 average taxpayers have supported the general consolidated budget with 60% of the revenue. The contribution of the measure of blocking revenues from budget accounts was not neglected, and by issuing a number of 1,813,391 notifications regarding bank sequestration the amount of 2850.68 million lei was collected for the general consolidated budget of the state, given the conditions of the increasing financial difficulties of businesses as a result of the deepening of the economic crisis in Romania. To better fulfill its mission regarding the collecting of public money NAFA through the territorial fiscal agency will require better future planning of the revenues administered also by the increased efficiency in all areas. This way, strengthening the budget revenue forecasting methods and therefore genuine implementation of performance contracts, will be crucial prerequisites for optimizing results in the collection of public financial resources.

We consider that the procedure of tax claim sequestration allows the state-financed creditor to recover the tax claims by blocking the tax claim that the debtor has towards a third party in the hands of the latter (sequestered third party). Like other ways of compulsory enforcement, this procedure is justified by the lien mentioned in the Civil Code of the creditor on the property of his debtor; the debtor's assets consisting of not only the possessions of the holder, but also the debtor's tax claims which represent intangible property rights.

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